

**MOSS v. BALLARD**  
**CASE NO. 2:09cv01406**

**RESPONDENT'S EXHIBIT 33**  
**(Continuation, pp. 685 to end)**

*Lodge*

**Cathy S. Gatson, Clerk**  
Kanawha County Circuit Court  
111 Court St., Charleston, WV 25301

Telephone: (304) 357-0440  
Facsimile: (304) 357-0473



TO: CLERK OF SUPREME COURT

FROM: CATHY S. GATSON

DATE: JUNE 18, 2003

RE: JOHN MOSS, III

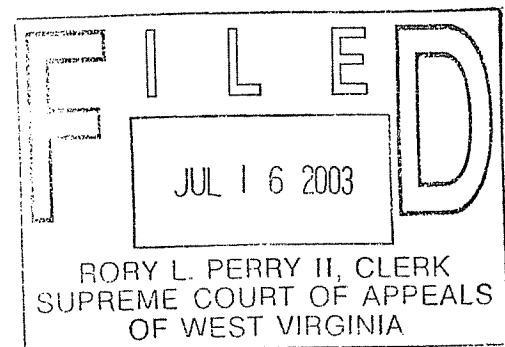
v.

GEORGE TRENT, Warden, etc.  
RESPONDANT

APPEAL NO. 94-MISC-663

The entire record has been designated in the above referenced case. If the appeal is accepted, please retain the original file. No additional paperwork has been filed in this record. Please attach this with the record for appeal purposes.

If you have any questions regarding this matter, please do not hesitate to contact Mary Ann Billings.



685

94-1150663

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 9<sup>th</sup> day of September 2004, the following order was made and entered:

John Moss, III, Petitioner Below, Appellant

vs.) No. 31646

George Trent, Warden of the West Virginia  
State Penitentiary, Respondent Below, Appellee

CATHY S. FAISON, CLERK  
KANAWHA CO. CIRCUIT COURT

2004 OCT -7 PM 2:32

FILED

The Court, having maturely considered the record and the oral argument and the briefs of counsel thereon, is of the opinion for reasons stated in writing and filed with the record that there is no error in the ruling of the Circuit Court of Kanawha County, rendered on the 30<sup>th</sup> day of January, 2003. It is therefore considered and ordered by the Court that said ruling be, and it hereby is, affirmed; all of which is ordered to be certified to the Circuit Court of Kanawha County.

The syllabus of points adjudicated, prefixed to the written opinion aforesaid prepared Per Curiam, was concurred in by Chief Justice Maynard and Justices Davis, Starcher, McGraw and Albright.

A True Copy

Attest:

*Rory J. Perry II.*  
Clerk, Supreme Court of Appeals

RECORDED

686

135

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2007 MAR -2 AM 9:29

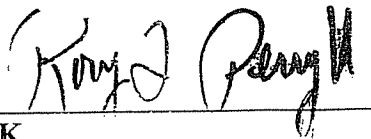
FILED

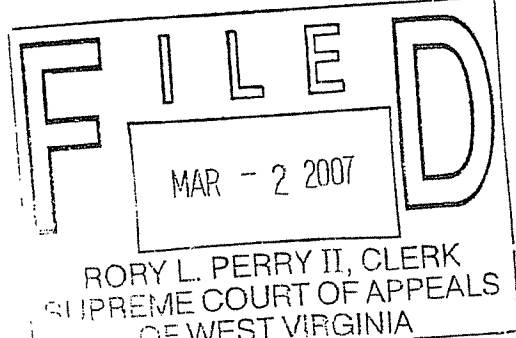
STATE OF WV, EX REL JOHN MOSS, JR  
Vs  
THOMAS L MCBRIDE, WARDEN  
MOUNT OLIVE CORRECTIONAL COMPLEX

06-MISC-245  
06-MISC-298  
94-MISC-663  
CR-82-F-221

Received the above appeal action on the \_\_\_\_\_, 2007.

136

  
CLERK  
SUPREME COURT OF APPEAL  
OF WEST VIRGINIA

  
FILED  
MAR - 2 2007  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA



OFF-MISC 663

STATE OF WEST VIRGINIA  
IN THE SUPREME COURT OF APPEALS  
IN VACATION

John Moss, III, Petitioner Below, Petitioner

vs.) No. 070678

Thomas McBride, Warden, Mount Olive  
Correctional Complex, Respondent Below,  
Respondent

FILED  
2007 JUL 23 PM 2:09  
CLERK'S OFFICE  
JUL 23 2007

On a former day, to-wit, March 5, 2007, came the petitioner, John Moss, III, pro se, and presented to the Court his petition praying for an appeal from a judgment of the Circuit Court of Kanawha County, rendered on the 16<sup>th</sup> day of October, 2006, with the record accompanying the petition.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition for appeal. Justice Albright would grant.

DONE IN VACATION of the Supreme Court of Appeals, this 9<sup>th</sup> day of July, 2007.

Honorable Robin Jean Davis, Chief Justice

Honorable Larry V. Starcher

Honorable Elliott E. Maynard

Honorable Joseph P. Albright,

Honorable Brent D. Benjamin

Received the foregoing order this 9<sup>th</sup> day of July, 2007, and entered the same in Order Book No. 159.

A True Copy **RECORDED**

Attest:

Rory J. Perry II.  
Clerk, Supreme Court of Appeals

137

**DITRAPANO & JACKSON**  
ATTORNEYS AT LAW  
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LONNIE C. SIMMONS  
DEBRA L. HAMILTON  
SEAN MCGINLEY  
L. DANTE di TRAPANO\*

\*Also admitted in Georgia

October 2, 1996

**HAND DELIVERY**

**FILE COPY**

Honorable A. Andrew MacQueen  
Chief Judge  
13th Judicial Circuit  
Kanawha County Judicial Annex  
111 Court Street  
Charleston, West Virginia 25301

Re: ***John Moss, III v. George Trent***  
**Civil Action No. 94-MISC-663**

Dear Judge MacQueen:

Enclosed for your review is **PETITIONER'S RESPONSE TO MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**. I have also filed with you a notebook of exhibits relevant to the Fred Zain issue. The notebook I have given you is the original.

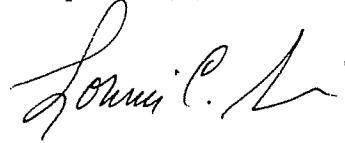
It is my understanding that the issue is now ripe for decision by the Court. On behalf of my client, I respectfully ask this Court to issue a ruling as soon as possible so that this matter may be resolved one way or the other without any further delay. Obviously, these pleadings raise very serious issues and I do not mean to place undue or improper pressure on the Court to render a prompt decision. However, my client has been incarcerated for approximately seventeen years and would very much appreciate bringing this matter to an end.

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Honorable A. Andrew MacQueen  
October 2, 1996  
Page 2

If after reviewing the pleadings and exhibits, the Court believes an additional hearing is required, I would be happy to comply with any requests.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Lonnie C. Simmons".

Lonnie C. Simmons

LCS/jb

Enclosure

cc: Steve Revercomb  
Jon Blevins

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**JOHN MOSS, III,**

Petitioner,

v.

Civil Action No. 94-MISC-663

**GEORGE TRENT,** Warden of the  
West Virginia State Penitentiary,

Respondent.

FILED  
OCT 29 2010  
CLERK OF COURT  
KANAWHA COUNTY  
WEST VIRGINIA

**EXHIBITS RELEVANT TO THE FRED ZAIN ISSUE**

4/8

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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JOHN MOSS, III,

Petitioner,

VS.

CIVIL ACTION NO. 94-MISC-663

GEORGE TRENT, Warden of the  
West Virginia State Penitentiary,

Respondent.

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COPY

The deposition of ROBERT MURPHY was taken on the 17th day of May, 1995, beginning at 10:10 a.m., in the Law Offices of DiTrapano & Jackson, 604 Virginia Street, East, Charleston, Kanawha County, West Virginia, before Penny L. Kerns, Notary Public and Certified Court Reporter, for purposes of discovery and/or to be read as evidence in the above-styled matter which is now pending and undetermined in said Court.

**GARRETT REPORTING SERVICE**  
"PROFESSIONAL STENOMASK FOR THE RECORD"

5208 GLOW DRIVE, CROSS LANES, WEST VIRGINIA 25313 • (304) 776-5303

APPEARANCES: On behalf of the Petitioner:

LONNIE C. SIMMONS, ESQUIRE  
DiTrapano & Jackson  
604 Virginia Street, East  
Charleston, West Virginia 25301

On behalf of the Respondent:

MARY BETH KERSHNER, ESQUIRE  
Assistant Prosecuting Attorney  
for Kanawha County  
Judicial Annex  
Charleston, West Virginia 25301

\*\*\*\*\*

I N D E X

<u>Witness</u>	Examination by	
	<u>Mr. Simmons</u>	<u>Ms. Kershner</u>
Robert Murphy	3	53

<u>Exhibit</u>	<u>Marked</u>
Deposition Exhibit No. 1	16
Deposition Exhibit No. 2	24

Reporter's Certificate 57, 58

Page 3	Page 5
<p>1 (Witness sworn)</p> <p>2 THEREUPON came</p> <p>3 ROBERT MURPHY</p> <p>4 called as a witness herein, who, having been first duly</p> <p>5 sworn according to law, testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. SIMMONS:</p> <p>8 Q Mr. Murphy, my name is Lonnie Simmons. I</p> <p>9 represent John Moss, III, in a habeas corpus action here in</p> <p>10 Kanawha County. I guess I've met with you once before.</p> <p>11 The purpose of this deposition is to create a record in</p> <p>12 connection with this habeas corpus proceeding. I usually</p> <p>13 put on the record in these things that in habeas corpus</p> <p>14 actions clients don't have an absolute right to be present</p> <p>15 and my client is aware of that fact and so I've talked to</p> <p>16 him and he knows that I'm doing this today, and my plan is</p> <p>17 simply to get some information from you so we'll have it on</p> <p>18 the record and this will become part of the record in a</p> <p>19 habeas corpus action. Would you state your name for the</p> <p>20 record, please?</p> <p>21 A Robert C. Murphy.</p> <p>22 Q Mr. Murphy, where are you currently</p> <p>23 employed?</p>	<p>1 Department of Public Safety in West Virginia?</p> <p>2 A December of 1971.</p> <p>3 Q And in what capacity were you first employed</p> <p>4 by the Department of Public Safety?</p> <p>5 A As a chemist. At that time, chemists were</p> <p>6 considered generalists, which means you worked on anything</p> <p>7 related to a particular case regardless of whether it was</p> <p>8 drugs or soils or whatever.</p> <p>9 Q Hair? Could you do hair analysis?</p> <p>10 A Uh-huh. Whatever was involved in that case.</p> <p>11 Q Okay.</p> <p>12 A Three or four years later, the mid 70's,</p> <p>13 started specialization where you would focus on one</p> <p>14 particular area.</p> <p>15 Q What area did you focus on three of four</p> <p>16 later?</p> <p>17 A Serology.</p> <p>18 Q So approximately from '74, '75 till when did</p> <p>19 you focus exclusively on serology?</p> <p>20 A Pretty much.</p> <p>21 Q When did you leave the state police?</p> <p>22 A I left the state police in-- well, I</p> <p>23 resigned October of '82, but I had been out of serology for</p>
Page 4	Page 6
<p>1 A CT &amp; E Environmental Services in</p> <p>2 Charleston.</p> <p>3 Q Okay. Now, how long have you been employed</p> <p>4 by that company?</p> <p>5 A A little over seven years.</p> <p>6 Q Before we get the rest of your work history</p> <p>7 with the state police, what's your educational background</p> <p>8 as far as college and onward?</p> <p>9 A Bachelors degree in chemistry from Rutgers</p> <p>10 University. I also attended the West Virginia University</p> <p>11 Graduate School of Chemistry and Marshall University</p> <p>12 Graduate School also in chemistry, a number of short</p> <p>13 courses put on by professional organizations, the American</p> <p>14 Academy of Forensic Sciences and the Southern Association</p> <p>15 of Forensic Science.</p> <p>16 Q Okay. When you say you did some post-</p> <p>17 graduate studies at Marshall and WVU in chemistry, did you</p> <p>18 obtain any additional degree or were these just additional</p> <p>19 classes?</p> <p>20 A No. It was the equivalent of a masters</p> <p>21 degree, but I did not receive a masters degree. It was</p> <p>22 about thirty-some hours.</p> <p>23 Q When were you first employed by the</p>	<p>1 approximately a year. There had been, let's see, one</p> <p>2 resignation and one retirement, which left a void in the</p> <p>3 drug analysis area and I shifted to fill in for that. So</p> <p>4 it was about a year prior to my leaving.</p> <p>5 Q Did there come a time when you were the head</p> <p>6 of the serology division of the state police?</p> <p>7 A Yes, sir.</p> <p>8 Q About what year did that happen?</p> <p>9 A It was never an official position.</p> <p>10 Q Okay.</p> <p>11 A I was the senior serologist, so I more or</p> <p>12 less supervised.</p> <p>13 Q Do you know approximately when that would</p> <p>14 have occurred that you more or less supervised the other</p> <p>15 serologists?</p> <p>16 A. Until 1976 when I believe Fred Zain was</p> <p>17 hired, I was the only serologist, so there was no one to</p> <p>18 supervise. At the time he was hired, basically I became</p> <p>19 the supervisor.</p> <p>20 Q We'll get into that a little bit more.</p> <p>21 When you-- What was the reason for leaving in October of</p> <p>22 '82?</p> <p>23 A It was personal.</p>



Page 7	Page 9
<p>1 Q Okay. Sometime after '82, did you start 2 working for the company you mentioned in the beginning? 3 A Well, when I left the state police, I went 4 to work for the Department of Natural Resources as a 5 chemist and I was with them until March of 1988. 6 Q Okay. 7 A And then I left there to work for this 8 private commercial testing company. 9 Q Okay. Well, during the time that you worked 10 for the state police, I take it you testified as an expert 11 in serology in a number of cases? 12 A Quite a few. Yes, sir. 13 Q During the time that you were there, you 14 were essentially the main serologist? 15 A Yes, sir, I was. 16 Q Okay. I think you mentioned that Fred Zain 17 was hired in 1976. At the time that Fred Zain was hired, 18 were there any other serologists besides yourself in the 19 department? 20 A There was one other person who was not 21 actively doing it, but had been basically my trainer. That 22 was a Sergeant White, but he was not actively doing the 23 serology work.</p>	<p>1 he was competent. Other than that, no. 2 Q Did you have any knowledge at that time 3 about Fred Zain's educational background and his chemistry 4 background in particular? 5 A No, sir. Like I say, I may have seen a 6 resume, but I didn't pay a whole lot of attention to it. I 7 might mention that the state police basically followed 8 civil service regulations where a person could be 9 classified as a chemist even if their degree were in some 10 other natural science, and for that reason, I didn't pay a 11 whole lot of attention to what his degree was. 12 Q So beginning in 1976 when Fred Zain was 13 hired, I take it you supervised, generally supervised his 14 work? 15 A Yes, I did. 16 Q Do you have any general opinions about the 17 work performed by Fred Zain that you observed yourself? 18 A My personal experience was, I had no 19 problems with his work. He was competent. He was a good 20 analyst. 21 Q Okay. During the time that you supervised 22 Fred Zain's work, do you recall having any particular 23 arguments or disputes with him over the analysis in a</p>
Page 8	Page 10
<p>1 Q So when Zain was hired in 1976 were the only 2 serologists in the department at that time you and Mr. 3 Zain? 4 A Yes, sir. Uh-huh. 5 Q Let's talk about the hiring of Fred Zain. 6 Were you involved in the decision to hire Fred Zain in any 7 way? 8 A I believe I interviewed him, but that was 9 only to basically obtain my opinion as to whether he was 10 competent to do the work. I had no role in the actual 11 decision. I talked to him, I may have seen a resume, but 12 other than that, I mean, I didn't have a role in his 13 hiring. 14 Q Do you have any recollection of the 15 interview with Mr. Zain and/or what your impressions were 16 at that time? 17 A As best as I can remember, I felt he was 18 competent, that he was capable of doing the work. Other 19 than that, I have no details as to the interview. 20 Q Do you recall making any kind of a 21 recommendation to the other persons involved in the hiring 22 process? 23 A I probably expressed my opinion that I felt</p>	<p>1 particular case? 2 A No, sir. 3 Q Were you ever aware of any cases where Fred 4 Zain said that he saw a marker in a given test and you did 5 not see a marker in that test? 6 A No, sir. 7 Q Had you heard any of the stories about the 8 magic wand in the laboratory? 9 A In the newspapers, but not-- I have no 10 personal knowledge. Just from what I've read. 11 Q But not at the time you worked in the lab 12 with Mr. Zain, you hadn't heard of the magic wand? 13 A No. 14 Q Okay. I'd like to turn to the case that 15 we're dealing with here. I just wonder, sitting here 16 today, do you recall working on what I'll call the 17 investigation of the Reggett murders? 18 A Yes, sir. 19 Q What's the first thing you can remember 20 about this case, your earliest memory of having any 21 involvement in the investigation of those three murders? 22 A The fact that there had been three murders 23 and someone had to go to the crime scene to collect</p>



Page 11

1 evidence and it was determined that Fred Zain would be the  
2 person that went actually to the scene. I might mention  
3 the reason I remember this case is, it was an unusual  
4 case.

5 Q Can you recall if there is any particular  
6 reason why Fred Zain went to the crime scene versus  
7 yourself?

8 A I can't recall how that decision was made,  
9 but he was the one that was sent to the scene.

10 Q Do you recall being involved in that  
11 decision-making process?

12 A Not really, no.

13 Q Was it common for a serologist to go to the  
14 scene of a crime and actually obtain the samples of  
15 evidence to be tested later?

16 A No, sir, not really.

17 Q Other than this case, can you recall any  
18 other examples of cases where the serologist went to the  
19 scene of the crime to obtain the samples?

20 A Yes, sir. I can recall one case in which I  
21 was sent to Martinsburg to obtain samples from a vehicle.  
22 There was also a fingerprint examiner that was sent at the  
23 same time.

Page 12

1 Q What was it about the Martinsburg case you  
2 just mentioned that someone decided they wanted you to go  
3 there in person?

4 A I really can't say. I mean, it was-- I was  
5 told I was going and that was-- I didn't have any say in  
6 the matter.

7 Q Sure. Okay. As a serologist, were you  
8 trained in how to obtain evidence from the scene of a  
9 crime?

10 A Not specifically. I was trained on how to  
11 basically preserve samples, how they were to be handled,  
12 but as far as what samples were to be taken, no.

13 Q Okay. Are you aware of whether or not Mr.  
14 Zain at that time, and this would have been in December of  
15 1979, had had any training in the procedure for obtaining  
16 evidence at the scene of a crime?

17 A Probably not. I think that at that time  
18 period a lot of this was what I would call common sense.  
19 You basically chose the samples based on what you perceived  
20 to be important and then you took whatever precautions were  
21 necessary to make sure that the integrity of those samples  
22 was maintained. As far as formal training in collecting  
23 evidence, I don't recall any training at all.

Page 13

1 Q Let me just focus on one thing about the lab  
2 at that time, and we're talking about around December of  
3 1979. Did the laboratory at that time have any written  
4 protocol on laboratory procedures. first of all?

5 A No, sir.

6 Q Okay. And how about any written protocol on  
7 obtaining evidence at the scene of a crime?

8 A No, sir.

9 Q Did they have any written protocol on  
10 anything at that time--

11 A No, sir.

12 Q December of '79?

13 A No, sir.

14 Q So the lab at that time essentially didn't  
15 have any written protocol about how serological tests, hair  
16 tests, any tests you can think of, there simply was no  
17 written protocol?

18 A No, sir.

19 Q Okay.

20 A That was a concept that was coming into  
21 place but was not in place. In the early '80s that came  
22 into place, but up till that point, the general procedure  
23 was, you followed generally accepted procedures, but not

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1 necessarily anything written down, just what was considered  
2 generally accepted in a forensic laboratory, and it was  
3 unwritten but well understood among forensic chemists, not  
4 necessarily anyone else, but it was pretty much understood  
5 among forensic chemists what was acceptable and what was  
6 not.

7 Q Did the laboratory at that time-- and again,  
8 this is December of 1979-- did it have any procedure for  
9 routinely testing the various materials used in serological  
10 testing to make sure that, in other words, sort of a  
11 quality control type, quality control/quality assurance  
12 kind of a program, was there any kind of program like that  
13 in place at that time?

14 A No, sir.

15 Q Okay. Do you know if at that time, December  
16 of 1979, that the lab did test the materials that were used  
17 in serological testing, for example, to ensure the quality  
18 and that sort of thing?

19 A Not the materials themselves. There was  
20 indirect testing in that known blood samples, that was from  
21 members of the criminal identification bureau donated blood  
22 samples and they were tested routinely. They were the  
23 standards that were used. If there had been a problem with

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Page 15

1 the materials, the chemicals, then it would have shown up  
2 in those tests. But as far as separate testing, it was not  
3 done.

4 Q I take it you did not go to the crime scene  
5 when Fred Zain went to obtain evidence samples; am I right  
6 about that?

7 A You're correct about that. I did not go.

8 Q When Fred Zain came back to the lab and this  
9 is again, we're talking-- let me make sure I'm right here,  
10 around December 13th and 14th of 1979, and let's say he  
11 started bringing stuff back to the lab, do you recall any  
12 discussions you had with Mr. Zain at that time? I  
13 obviously understand a whole heck of a lot of time has  
14 passed, but I'm just asking if you recall any conversations  
15 you may have had with Mr. Zain when he returned from the  
16 crime scene?

17 A Not specifically, no. I'm sure there was  
18 some discussion, but I have no idea what it might have  
19 been.

20 Q Would you have any knowledge as to whether  
21 or not Mr. Zain used rubber gloves and things like that  
22 when he was at the crime scene obtaining these samples?

23 A No, sir, and I can't recall what samples he

Page 16

1 may have taken as opposed to the fingerprint examiners and  
2 medical examiner. There were quite a few people at the  
3 crime scene and I have no idea who collected what.

4 Q Do you have any knowledge about the  
5 procedures that Fred Zain followed when he obtained those  
6 samples from the crime scene?

7 A No, sir.

8 Q Were you aware of how he packaged those  
9 samples at the crime scene?

10 A No, sir.

11 Q Let me have an exhibit marked here. I'll  
12 tell you what I've done just so you'll understand. I've  
13 copied the documents that were produced, that Ted Smith, I  
14 guess, got off the microfiche, and I've had them Bates  
15 numbered because at some point I'm going to have Mr. Murphy  
16 identify which ones he thinks he wrote and which ones he  
17 didn't, so I was going to have this marked as Deposition  
18 Exhibit 1 and here's your own copy with the Bates number at  
19 the bottom.

20 (WHEREUPON, the document referred  
21 to was marked for purposes of  
22 identification as Deposition Exhibit  
23 No. 1 and is attached hereto.)

Page 17

1 BY MR. SIMMONS:

2 Q For the time being, if you would just maybe  
3 kind of glance through that and we'll be more specific as  
4 time goes on, but I was actually going to ask you a couple  
5 of questions about the report.

6 A (Witness examines document.)

7 Q Now, have you had a chance to just generally  
8 glance at the report? I know there are some other  
9 documents there, but we'll get into more detail here  
10 shortly. I had some preliminary questions before I started  
11 asking you some specifics about that.

12 Once these items that were collected at the  
13 crime scene were brought back to the laboratory, do you  
14 recall who was involved in performing serological tests on  
15 the various items recovered?

16 A To the best of my recollection, I was  
17 involved in most of the testing.

18 Q Okay.

19 A I don't know that I saw-- that I did  
20 everything, but I did see all of the results.

21 Q Who else would have been involved in the  
22 testing?

23 A Fred Zain.

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1 Q And maybe-- I think beginning in this  
2 Deposition Exhibit No. 1, beginning, it's the Bates number  
3 four, is the first sheet of a report dated June 10, 1980.  
4 Do you have a general recollection of doing that report  
5 yourself?

6 A To the best of my recollection, I did write  
7 the report.

8 Q I've got a general question about the  
9 procedures in the laboratory. What is the significance of  
10 the date June 10th, 1980?

11 A That should have been the date of the  
12 report. The date it was issued.

13 Q Let me ask you this. Would that be the date  
14 that someone in the secretarial pool typed it out or would  
15 that be the date you actually maybe wrote a handwritten  
16 version and then it was typed out?

17 A I can't remember.

18 Q You don't know?

19 A No.

20 Q Okay. Is it possible there's some sort of  
21 delay between when you wrote the report in your own  
22 handwriting and it being typed out?

23 A There is a possibility, yes.

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Page 19

Page 21

1 Q Okay. On page, and I'm referring to the  
2 Bates number, it's page two of the report, Bates number  
3 five.

4 A Uh-huh.

5 Q It lists items one through seventeen and  
6 then it says, "The above items were recovered from the  
7 scene by Trooper F.S. Zain 12/13/79."

8 A Uh-huh.

9 Q Would that date-- so that's the date it was  
10 recovered. Do you have any knowledge as to when you would  
11 have received those in the laboratory or is that just not  
12 shown in your report?

13 A They would have been received in the  
14 laboratory the same day.

15 Q Okay. Then on down on that same page, this  
16 is Bates number page five, page two of the report.

17 A Uh-huh.

18 Q It talks about a blood specimen from Vanessa  
19 Reggett and a nightgown. "The above items were received  
20 from Trooper M.D. Smith 12/14/79." When it says received,  
21 does that mean received at the lab?

22 A Yes.

23 Q Then down on the same page after listing it

1 see where it says, "VR"? It's to the left of those item  
2 numbers.

3 A No, sir.

4 Q Is that your writing?

5 A No, it isn't.

6 Q Okay. Then following-- let me see. I  
7 think we already talked about the flashlight from Shumate.  
8 There's a blood specimen from Paul Reggett, III, that was  
9 received on January 2nd of '80?

10 A Uh-huh.

11 Q The next items are a doll and table knife  
12 and some clothing that was received on January 17th of  
13 '80?

14 A Right.

15 Q And there's something written above that.  
16 Do you recognize that writing?

17 A No, sir, I don't.

18 Q Do you know-- can you read that? I'm not  
19 sure I can read that middle word.

20 A No, sir.

21 Q It's looks like 1/7/80 and then there's a  
22 word and then 3/11/80. Do you not have any idea what that  
23 means?

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1 looks like a lot of clothing, "The above items were  
2 received from Trooper Terry Williams 12/14/79." So the lab  
3 would have had those pieces of clothing on that date?

4 A That's correct.

5 Q Then the next one, the blood specimens from  
6 Paul Eric Reggett and Bernadette Reggett, those were  
7 received on 12/17/79?

8 A That's correct.

9 Q Turn to the next page. There are some  
10 items, a Christmas package and a flashlight. It says,  
11 "Received on 12/18/79."

12 A That's correct.

13 Q That means the lab received it then?

14 A The chemistry lab. Corporal Shumate was a  
15 fingerprint examiner and he probably collected those items  
16 himself.

17 Q Okay.

18 A And did his examination and then turned them  
19 over to the chemistry lab.

20 Q By the way, before I pass this by, I guess  
21 starting on the first page of the report that was on the  
22 microfiche, there's some handwriting on the report and I  
23 just wondered if you recognized that handwriting? Do you

1 A No, sir.

2 Q Okay. Next there's a list of names and  
3 apparently blood samples were obtained from them and  
4 received in the lab in January of 1980. I was wondering  
5 what information do you have as to why blood specimens were  
6 obtained from those individuals?

7 A Okay. Since I talked to you the first time,  
8 I've thought about that a great deal. When the laboratory  
9 determined that someone else had been in that house, I hate  
10 to put it this way, but basically the state police went on  
11 a fishing expedition and rounded up a number of people in  
12 that area that were possible suspects and obtained blood  
13 samples from them to see if any of their blood specimens  
14 matched what was found in the house. They did not, but I  
15 mean, that's the reason for those samples.

16 Q Do you recall any of the specifics as to why  
17 one name was on there versus another?

18 A No, sir. They were just submitted to the  
19 laboratory as potential suspects and we examined them and  
20 ruled them out.

21 Q Okay. The next item is stainless flatware  
22 that's also from Shumate and that's February 6th of '80.  
23 So is it possible that he tried to do fingerprint on that



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1 and then he gave it to your lab?

2 A Yes, sir.

3 Q Then there are some additional, it looks  
4 like clothing items that were received February 7th of '80,  
5 and that means the lab received those February 7th of '80?

6 A That's correct.

7 Q Okay. And I think the final items submitted  
8 are two tubes of blood from John Moss and that's April 22nd  
9 of '80?

10 A That's correct.

11 Q Do you recall testifying before the grand  
12 jury, which resulted in the indictment of Paul Reggett,  
13 III, I think it is?

14 A Again, since talking to you, I've thought  
15 about that a great deal. The best of my recollection is, I  
16 have only testified before one grand jury and I believe  
17 that was for John Moss. I had nothing in the way of  
18 physical evidence to connect Paul Reggett to this case, so  
19 I would not have testified in the grand jury.

20 Q I understand a lot of time has passed by and  
21 I've found something since I met with you that might help  
22 refresh your recollection. I've got a couple of things  
23 here. Let's see. I would like to have this marked as

1 jury which indicted Mr. Reggett?

2 A It may have been the same grand jury, but I  
3 had no testimony related to Mr. Reggett.

4 Q Just to make it clear. I'd like to show  
5 you-- you testified-- let me see what the date of this one  
6 is-- on September 19th, 1983, and this is in-- this is the  
7 suppression hearing in the John Moss case before his first  
8 trial, and I would bring your attention to pages I think  
9 two fifty-five and two fifty-six, I think you'll see, and  
10 just see, if you'll look at that, see if that refreshes  
11 your recollection at all.

12 A (Witness examines documents.) Well, that  
13 was the grand jury.

14 Q Does that refresh your recollection?

15 A Again, to me it indicates that my testimony  
16 before the grand jury had no relationship to Paul Reggett.  
17 It was related to John Moss. I don't know if this is on or  
18 off the record, but once there was an inconsistency found  
19 in the blood sample that indicated someone else had been in  
20 the house, the state police were still convinced that Paul  
21 Reggett was involved and they were basically looking for a  
22 second party, an accomplice in effect.

23 John Moss met the criteria for an

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1 Deposition Exhibit Number 2, please.

2 (WHEREUPON, the document referred  
3 to was marked for purposes of  
4 identification as Deposition Exhibit  
5 No. 2 and is attached hereto.)

6 BY MR. SIMMONS:

7 Q And ask that you look at that document.

8 A (Witness examines document.)

9 Q And particularly note the bottom of the  
10 second page.

11 A As I stated, I had no physical evidence  
12 connecting Paul Reggett with this case. There was some  
13 evidence obviously connecting John Moss. If I testified  
14 before the grand jury, it was in relationship to John Moss  
15 not to Paul Reggett.

16 Q Okay. Let me ask you this. I guess the  
17 reason why I'm asking, we have not been able to find the  
18 grand jury transcript from the grand jury which indicted  
19 Mr. Reggett and you might also note that on the first page  
20 of Deposition Exhibit Number 2, John Moss's name is  
21 mentioned in the indictment of Mr. Reggett, but he's not  
22 indicted. I guess what I'm trying to find out from you, do  
23 you have any recollection of testifying before the grand

1 accomplice, but that did not exonerate Paul Reggett. If  
2 the grand jury was looking at both people, as I said, there  
3 was no physical evidence connecting Paul Reggett to the  
4 crime. So when I appeared before the grand jury, I would  
5 have had nothing to say regarding Paul Reggett. It was  
6 only John Moss that I had any physical evidence that  
7 connected him.

8 Q Just so we make it clear, I think you stated  
9 that you, during the whole time you worked for the state  
10 police, you only testified before a grand jury on one  
11 occasion?

12 A The best as I can remember, yes, sir.

13 Q And that would be--

14 A That would be this one.

15 Q -- this one particular case?

16 A Uh-huh. I stated earlier this was an  
17 unusual case because the investigating officers, because  
18 they had a confession and because Paul Reggett's behavior  
19 was unusual, were convinced that they had the right person  
20 and the physical evidence indicated someone else was  
21 involved either totally or partially, and there was some  
22 resistance on the part of the investigators to pursue that  
23 because they would have rather explained it away than

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1 pursue it because they felt they had the right person.  
2 Q Can you recall the names of these people  
3 that you're calling the investigators or the investigating  
4 officers? Can you identify who those people may have  
5 been?  
6 A You've handed me some documents that could  
7 give me some names. I don't want to say I recall that.  
8 The South Charleston detachment commander was the principal  
9 contact, but there were people working under his  
10 supervision that were actually doing the investigation.  
11 Having the seen the documents, I do recall  
12 Terry Williams as being one of the investigators. Again,  
13 the best I can recall, the South Charleston detachment  
14 commander was Corporal Cook and there were several Cooks  
15 so-- but there was some discussion back and forth about  
16 what evidence was and what it meant and what needed to be  
17 done and basically, as I said, there was some resistance to  
18 pursue this matter because they felt they had the right  
19 person.  
20 And this puts me in an awkward position  
21 because I was a member of the state police. I'm not  
22 putting them down. They basically were following their  
23 instincts that they had the person and the laboratory was

1 cut, they bled and a drop of blood fell on that paper, and  
2 it would be difficult to plant that so--  
3 Q Let me ask you this. When the evidence from  
4 the crime scene was brought back to the laboratory, are you  
5 saying that the lab had the actual items such as the  
6 wrapping paper as opposed to having some swatch which had  
7 absorbed the blood from the wrapping paper?  
8 A No, we had the actual wrapping paper.  
9 Q Okay. So when the analysis was performed,  
10 you had in the laboratory the actual wrapping paper? Maybe  
11 there was a knife and some of the other items, you had the  
12 actual item itself?  
13 A Yes, sir.  
14 Q Well, as far as you can recall, were any of  
15 the blood stains obtained at the crime scene placed on  
16 swatches as opposed to actually bringing in the item of  
17 evidence itself?  
18 A Not that I can recall. They were the actual  
19 items.  
20 Q When-- let me ask you this. At-- this is  
21 again back in December of 1979. Did the laboratory have  
22 any kind of cataloging of types obtained in other cases?  
23 In other words, let me try to illustrate that.

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1 producing contradictory evidence that said maybe you do and  
2 maybe you don't, and they wanted to believe that they were  
3 right so--  
4 Q Did they ever-- do you recall any of the  
5 people involved in the investigation ever questioning any  
6 of your results or did they come up with any other kinds of  
7 theories to explain them away?  
8 A Yes. Again, the detachment commander of  
9 South Charleston tried to explain away our results by  
10 trying to say that Paul Reggett had planted blood at the  
11 scene to throw us off the track and again, it was well  
12 intentioned. They thought they had the right man and they  
13 were trying to explain away the inconsistencies, and I  
14 won't say it was a heated discussion, but it was a little  
15 agitated, and we tried to say that no, we didn't believe  
16 that, someone else was in that house, and we wouldn't buy  
17 their trying to explain it away.  
18 On the Christmas wrapping paper, in  
19 particular, which to this day to me is the key piece of  
20 evidence, there was a very distinct drop of blood and it  
21 would be difficult to plant that. I mean, you could smear  
22 it, you could do a lot of things, that didn't look like  
23 anything other than what it appeared to be. Someone was

1 A A data base?  
2 Q A data base, yeah. If you got say a PGM 1+  
3 and an ABO B. did you have a way of looking through your  
4 files and saying, "Well, hey we got this from this case"?  
5 A No. That was something that was under  
6 consideration, but was not in place.  
7 Q So when you received the reference sample of  
8 blood from John Moss on April 22nd, 1980, the lab did not  
9 previously have any knowledge whatsoever of any of his  
10 types from any source?  
11 A As far as I can recall, no. I mean, we did  
12 not have a data base that we could reference.  
13 Q How about if Mr. Moss was incarcerated in  
14 another state? I guess what I'm wondering is whether or  
15 not your lab had contacted the other state to find out if  
16 they had done any blood testing? In other words, I'm  
17 trying to find out if you had any knowledge of his blood  
18 types before you received that reference sample?  
19 A As far as I can recall, the laboratory never  
20 contacted any other state and should not have had any  
21 reference to what his blood typing was.  
22 Q Okay. Let's just-- so I can get this part  
23 out of the way, let's turn in Deposition Exhibit Number 1

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<p>1 to it's Bates number ten, and what I'd like to do is have</p> <p>2 you look at that and determine if you recognize the writing</p> <p>3 on Bates number page ten?</p> <p>4 A That is mine.</p> <p>5 Q Okay. Maybe for purposes of this</p> <p>6 proceeding, if you would-- I'll give you a pen-- if you</p> <p>7 would write just "Murphy" at the bottom of that page and</p> <p>8 that way we'll be able to keep these straight.</p> <p>9 A (Witness complies.)</p> <p>10 Q Okay. Now, what would-- the fact that this</p> <p>11 particular document is in your writing--</p> <p>12 A Uh-huh.</p> <p>13 Q -- what is the significance of that other</p> <p>14 than the fact that you wrote it?</p> <p>15 A This basically is a compilation of all the</p> <p>16 parties involved or potentially involved and a summary of</p> <p>17 all the blood groupings. Just a tabular way of excluding</p> <p>18 people or including people.</p> <p>19 Q Would this sheet in your handwriting</p> <p>20 indicate that you had performed all of those tests or does</p> <p>21 that not indicate that?</p> <p>22 A Not necessarily.</p> <p>23 Q Okay.</p>	<p>1 Q Okay.</p> <p>2 A In the initial setup of serology, there were</p> <p>3 separate tests for determining whether a sample was blood</p> <p>4 and a second examination to determine if it was human</p> <p>5 blood.</p> <p>6 Q Okay.</p> <p>7 A When all of the enzymes and proteins were</p> <p>8 added, those became pretty much irrelevant, and possibly</p> <p>9 those first two columns are whether it is blood and whether</p> <p>10 it is human, but I'm just guessing.</p> <p>11 Q Okay. Let's go ahead and go to Bates number</p> <p>12 page eleven and I'd ask you to first of all let me know if</p> <p>13 you-- first of all, is that in your handwriting?</p> <p>14 A No, sir, it is not.</p> <p>15 Q Okay. Do you recognize whose handwriting</p> <p>16 that is?</p> <p>17 A No, sir.</p> <p>18 Q Would you-- well, let me put it this way.</p> <p>19 Only you and Fred Zain performed the serological testing in</p> <p>20 this case; that is correct, isn't it?</p> <p>21 A I'm not certain of that. There were two</p> <p>22 other serologists and I can't recall when they were hired</p> <p>23 and whether they were present at the time. That was Lynn</p>
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<p>1 A But, as I stated earlier, I would have seen</p> <p>2 the results.</p> <p>3 Q And would you say that-- I think you</p> <p>4 described this as a compilation. So this is a compilation</p> <p>5 sheet as opposed to being the original, what I call the raw</p> <p>6 data sheet that was filled out when the testing was</p> <p>7 actually done; would that be correct?</p> <p>8 A That is a fuzzy area because the way of</p> <p>9 keeping notes was in transition. It is possible that this</p> <p>10 is the actual bench sheet where things were recorded here,</p> <p>11 but it's also possible this is a summary sheet and there</p> <p>12 were other sheets for individual tests. I can't recall.</p> <p>13 Q In the first column across before you have</p> <p>14 the names listed, in other words, the column that is on top</p> <p>15 of the column where the names are, it looks like it says</p> <p>16 "JAN"; is that correct, or does that have any meaning to</p> <p>17 you?</p> <p>18 A Probably just January.</p> <p>19 Q And going from left to right, what does that</p> <p>20 first column-- do you know what that word is? I know it's</p> <p>21 very, very hard to see. I just didn't know if you might</p> <p>22 recall from doing the sheets what that first column is for.</p> <p>23 A No, sir.</p>	<p>1 Inman and Gale Midkiff, and I'm not sure if they were there</p> <p>2 at the time or not. They may have been.</p> <p>3 Q Okay. So--</p> <p>4 A But probably on this case the work was done</p> <p>5 by myself or Fred Zain.</p> <p>6 Q Do you have any specific recollection of</p> <p>7 Inman or Midkiff performing work in this case?</p> <p>8 A No, sir.</p> <p>9 Q Well, how about on this sheet, simply put</p> <p>10 "Not Murphy." That way we'll distinguish between what</p> <p>11 you're actually able to identify and what you're not.</p> <p>12 A (Witness complies.)</p> <p>13 Q Okay. And let's go to Bates number page</p> <p>14 twelve, and it looks like at the top half of the page</p> <p>15 there's writing that's different from the bottom half of</p> <p>16 the page, and I wonder first of all, do you recognize any</p> <p>17 of the writing on that page as being your writing?</p> <p>18 A The bottom half is mine.</p> <p>19 Q The one that's in print?</p> <p>20 A Uh-huh.</p> <p>21 Q And the top half is not yours?</p> <p>22 A No, it isn't.</p> <p>23 Q And again, you don't have any recollection</p>



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1 as to whether or not this is a compilation based upon raw  
2 notes or if this actually is the raw notes?

3 A No, sir.

4 Q Let me ask you this. Since the top half of  
5 that page is in someone else's handwriting other than  
6 yourself, do you take it from looking at this sheet that  
7 somebody else performed the examination of those items  
8 listed on the top of that page?

9 A Probably.

10 Q Maybe on this sheet, you should put "Bottom  
11 Murphy," maybe would be a way to distinguish.

12 A (Witness complies.)

13 Q Turning to Bates number thirteen, do you  
14 recognize any of that as being your handwriting?

15 A No, sir.

16 Q Okay. Why don't you just write "Not Murphy"  
17 on that?

18 A (Witness complies.)

19 Q Then on Bates number fourteen, which is a  
20 copy of, I think if you'll look at it, it's the back-side  
21 of Bates number thirteen. Do you see the initials "FSZ" on  
22 the top of that page?

23 A Yes, sir, I do.

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1 Q And that stands for Fred Salem Zain?

2 A Right.

3 Q So obviously this would be a page that you  
4 ought to put "Not Murphy" on, I assume; right?

5 A Uh-huh.

6 Q Okay. And it looks like Bates number  
7 fifteen, sixteen, seventeen, eighteen. It looks like it's  
8 the handwritten version of the typed report?

9 A That's correct.

10 Q And that is your handwriting?

11 A Yes, sir.

12 Q So if you wouldn't mind, if you'd write  
13 "Murphy" on those particular pages, please?

14 A (Witness complies.)

15 Q I think we can skip a few pages. There are  
16 some case submission reports that it looks like Inman  
17 received something, so she was there at least in January of  
18 '80.

19 A Okay. I kind of thought that Inman and  
20 Midkiff were there, but--

21 Q Okay. Well, let me ask you this. You  
22 mentioned that you reviewed the results. Do you recall  
23 reviewing the results of any serological testing in this

1 case performed by any person other than yourself or Fred  
2 Zain?

3 A I can't recall.

4 Q So you think it's possible that some of the  
5 work may have been done by Inman and Midkiff in this case?

6 A It's possible.

7 Q Okay.

8 A Again, to the best of my recollection, I saw  
9 the results.

10 Q But you do specifically recall reviewing  
11 some serological testing in this case that was performed by  
12 Fred Zain?

13 A Yes, sir.

14 Q Let's see. I think there are some other  
15 sheets near the back here that we probably ought to have  
16 identified.

17 MS. KERSHNER: Thirty-five?

18 BY MR. SIMMONS:

19 Q Yeah, if you would turn to Bates number  
20 thirty-five.

21 A Thirty-five?

22 Q Yeah. And I'd ask you, is that your  
23 handwriting?

1 A No, sir.

2 Q Okay. If you would just write "Not Murphy"  
3 on there, please?

4 A (Witness complies.)

5 Q And also thirty-six.

6 A Thirty-six.

7 Q Would you also say that's not Murphy?

8 A That's not Murphy.

9 Q Okay. The next document, Bates number  
10 thirty-seven is some kind of a map. Were you involved in  
11 drawing that diagram? Not a map, but a diagram.

12 A No, sir.

13 Q Do you know who did?

14 A No, I don't.

15 Q We won't mark anything on that one. How  
16 about Bates number thirty-eight? Is that your writing?

17 A No, sir.

18 Q Okay. Why don't you go ahead and write "Not  
19 Murphy" on there?

20 A (Witness complies.)

21 Q In looking at that sheet, does that have any  
22 significance to you? Can you understand what that person  
23 was doing?

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1 A Not really.

2 Q Okay. Let's see here. I guess the final  
3 group of documents I'd just like to see if you've seen  
4 before. Starting with forty-one, forty-two, forty-three,  
5 forty-four, forty-five and forty-six, do you recognize  
6 those documents at all? Not necessarily the writing, but  
7 just those document?

8 A No, sir, I don't.

9 Q Does it even look familiar as maybe a way of  
10 maintaining the chain of custody, anything like that?

11 A It appears to be a summary of the custody of  
12 evidence, but I don't remember this.

13 Q Okay. I think we're going to be done with  
14 those documents for the time being. Once you obtained the  
15 blood types from Vanessa Reggett, Paul Eric Reggett and  
16 Bernadette Reggett, isn't it true that you could deduce  
17 what the types of Paul Reggett, III, as the father would  
18 be, presuming he's the natural father?

19 A Not necessarily specifically, but within a  
20 certain category, yes, and the conclusion was that there  
21 was blood at the crime scene that either Paul Reggett, Sr.  
22 was not the father of those children or someone else was  
23 there, and it was the laboratory that requested the sample

1 have to have?

2 A That's correct.

3 Q Do you recall if you had found any types at  
4 the crime scene that could not have been deposited by the  
5 natural father under these facts?

6 A Right.

7 Q And I wonder if maybe you know off the top  
8 of your head or if you'd like to look through it, if you  
9 can point me out an example.

10 A Well, the Christmas wrapping paper was the  
11 one that stood out as not being consistent.

12 Q Okay.

13 A And that sample was the one that prompted us  
14 to ask for a sample of Paul Reggett's blood to begin with,  
15 because, as I said, either someone else was there or he was  
16 not the natural father.

17 Q Just for purposes of illustration, on page  
18 eleven of the petition I've got listed the types that were  
19 obtained from the Christmas wrapping paper and then on page  
20 eight of the petition, I have the table of the known types  
21 from, you know, the various reference samples. I wondered  
22 if you could just explain and illustrate what type you  
23 found from the Christmas wrapping paper that you knew could

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1 of blood from Paul Reggett.

2 Q Was the main purpose for getting the blood  
3 sample from Mr. Reggett to essentially establish that he  
4 was in fact the natural father?

5 A It was more to determine who the unknown  
6 blood came from. The assumption was that he was the  
7 natural father, but that was not the primary purpose. The  
8 primary purpose was to determine-- here we have an unknown  
9 blood sample. It doesn't match any of the three victims.  
10 It's got to belong to someone, so test Paul Reggett first.  
11 If it matches, okay, and if doesn't, then start looking for  
12 someone else.

13 Q Do you-- well, maybe this will-- let me just  
14 ask you a couple of questions here. I think based upon the  
15 testing in this case and your report and the various  
16 documents, various tables were made of the blood types that  
17 were obtained and this has been included in the petition  
18 for writ of habeas corpus and let me see if I can find a  
19 specific example of-- and it might help you to look at  
20 these, but I just wondered if, were there any types-- let  
21 me start over again. You mentioned that by knowing the  
22 types of the mother and the two children, you can  
23 essentially deduce the range of types that the father would

1 not have been deposited by the natural father? And I don't  
2 know if you can do that or not. but if you would look at  
3 those.

4 A It's been fifteen years.

5 Q Sure. I understand that.

6 A (Witness examines document.) In particular  
7 the ESD, the esterase. For each of these people to have a  
8 one, it means both parents had to be a one, because it's  
9 basically one/one. The Christmas wrapping paper was a  
10 two/one and known of the members of the Reggett family had  
11 the two to contribute, so the two/one had to come from  
12 someone else.

13 Q Okay.

14 A Now, there maybe some others, but--

15 Q That's a good example. I just wanted to  
16 illustrate that.

17 A Okay.

18 (WHEREUPON, a discussion was held  
19 off the record.)

20 BY MR. SIMMONS:

21 Q I'd just like to ask you the final part,  
22 just some general questions to make sure I understood what  
23 your thought process was in interpreting the samples you



<p style="text-align: right;">Page 43</p> <p>1 obtained and the statistics that you came up with. In this                  2 case, what was the purpose for obtaining reference samples                  3 from Vanessa Reggett, Bernadette Reggett, Paul Eric                  4 Reggett and Paul Reggett, III?                  5 A There were blood stains at the scene and                  6 basically the purpose was to try to account for all of the                  7 blood stains there and attribute them to a particular                  8 person or group of persons. This was a fairly common                  9 procedure at crime scenes and basically you try to                  10 reconstruct what happened. In other words, it sounds a                  11 little crude, but who bled where, and you can sometimes                  12 tell a sequence of events by doing that. So it was a                  13 routine practice to try to attribute blood stains in                  14 various areas of the crime scene with various people and                  15 that, like I say, was routine procedure.                  16 Q Okay. Is one purpose for obtaining                  17 reference samples to compare those known types with the                  18 types you obtained from the scene where you don't know who                  19 deposited the particular blood sample?                  20 A Right.                  21 Q What analysis did you use to account for the                  22 possibility-- well, strike that. Let me do it this way.                  23 Based upon your training and experience with serological</p>	<p style="text-align: right;">Page 45</p> <p>1 fifty/fifty, that the activity demonstrated in the exam                  2 would not be equal. So you would see in the pattern                  3 exhibited, you would see an inconsistency in the intensity                  4 of the bands produced. And that would indicate that you                  5 had a mixture. Not proof, but there would be an                  6 indication.                  7 When I said you're biased, you have to                  8 consider not only the test result, but the source of the                  9 sample you used and when there is, as I said, a discreet                  10 drop of blood, then you're pretty well assured that that is                  11 a single source.                  12 Q Let me go back to the question. I                  13 understand you have some other theories, or rather                  14 explanations or whatever and I'll be glad to get into that,                  15 but I just wanted to start with, the first question is,                  16 looking at the testing alone and the types that are                  17 obtained--                  18 A Huh-uh.                  19 Q -- can basic serological-- will you agree                  20 with me that using basic serological testing, you cannot                  21 distinguish between a mixture of blood from the source or                  22 whether it came from a single source?                  23 A No, sir.</p>
<p style="text-align: right;">Page 44</p> <p>1 testing, you were aware of the fact that this kind of                  2 serological testing is unable to distinguish between a                  3 mixture of blood from two different sources and blood from                  4 one source?                  5 A No, sir.                  6 Q You disagree with that?                  7 A I disagree with that.                  8 Q So it's your-- based upon your understanding                  9 and expertise, this kind of what I always call it is basic                  10 serological testing, is able to distinguish between a                  11 mixture of blood from two different samples; is that                  12 correct?                  13 A You're biasing the question because there's                  14 more involved than just the test itself. You have to look                  15 at the source of the sample. In other words, as I stated,                  16 on the Christmas wrapping paper, there was a discreet drop                  17 of blood. Now, if that had been a smear, then there would                  18 have been the possibility that that smear was more than                  19 one. But a discreet drop is invariably a single source.                  20 So taking that into account, along with the                  21 test results and again, a mixture would indicate-- well,                  22 there would be variability in the test result in that if                  23 you had two bloods mixed together, unless they were exactly</p>	<p style="text-align: right;">Page 46</p> <p>1 Q Okay. So you still disagree with that,                  2 even without this other explanation that you have, where                  3 you have to go beyond that? So you're saying, for example,                  4 if I had a tube of blood from you and I had a tube of blood                  5 from myself and I put them in a flask and I shook them up                  6 and I poured it at a crime scene and you tested it, if you                  7 strictly did serological testing, you would be able to                  8 separate my blood from your blood?                  9 A I wouldn't say I could distinguish them, but                  10 I would recognize that it was not a single source and I'm                  11 talking as a very experienced serologist.                  12 Q You would recognize it was not a single                  13 source because of the variations in the intensity of the                  14 bands?                  15 A Uh-huh.                  16 Q Okay. Using my illustration again-- let's                  17 use my illustration again. Let's say you only did ABO                  18 testing and let's say that you and I are both ABO O. how                  19 would you distinguish between our bloods under that                  20 circumstance?                  21 A No way.                  22 Q You wouldn't be able to do that?                  23 A No, sir.</p>

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1 Q So the only way that you would be able to  
2 distinguish using basic serological testing is if the  
3 particular typing system you're using, we differ under that  
4 system; would that be correct?

5 A That's correct.

6 Q Is it your opinion under that illustration I  
7 gave you, that there would necessarily be a difference in  
8 the intensity of the bands?

9 A Unless the mixture was exactly  
10 proportionate, there would be a difference in the  
11 intensity. So, I'm not ruling out the possibility that it  
12 could be deceptive, but I'm saying it would take  
13 extraordinary circumstances.

14 Q Okay.

15 A Under normal conditions, a mixture which  
16 would not be exactly proportionate, you would see a  
17 difference in the intensity of the bands.

18 Q Let's just stick with that illustration.  
19 Let's say that you and I, under that illustration, had the  
20 same ABO type O, but I'm PGM 1+ and you're PGM 2+. Under  
21 that scenario, if you tested this blood that was mixed  
22 together and placed on the carpet, you would anticipate  
23 when you did the PGM test seeing a band that demonstrated a

1 drops on the wrapping paper. Do you assume under that  
2 scenario that there was a single source for each separate  
3 blood drop?

4 A No, sir.

5 Q Okay.

6 A Each drop would have been examined  
7 independently.

8 Q Okay. Let's go ahead and turn to the  
9 specifics of this case. Let's say the Christmas wrapping  
10 paper, do you recall if this scenario happened at all?  
11 Let's say there were two drops on the wrapping paper and  
12 let's say you ran ABO, PGM on one drop and GLO and ESD on  
13 the other drop. Would that have happened or go ahead and--

14 A No.

15 Q -- maybe you can explain how you did it?

16 A If that had happened, that would have been  
17 reported separately.

18 Q Okay. You would not have combined those  
19 results?

20 A No. No, sir.

21 Q The lab also at that time, I assume, would  
22 not have accumulated samples let's say from the sheet.  
23 Let's say there were different drops all over the sheet,

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1 1+ and a band that demonstrated a 2+; would that be  
2 correct?

3 A Uh-huh.

4 Q And depending on the amount of the mixture,  
5 you would anticipate seeing a variation in the intensity?

6 A That's correct.

7 Q Let's say that you see a variation in the  
8 intensity of the bands. How would you report those  
9 results?

10 A I can't recall having experienced that, but  
11 it would have to be reported as a two/one, but qualified as  
12 being abnormal.

13 Q So it's possibly you have two/one, it's  
14 possibly a 2+ mixed with a 1+?

15 A Correct.

16 Q All right.

17 A As I said, qualified. In other words, it  
18 could be this, it could be this, it could be this. There's  
19 no way to determine it.

20 Q Okay. You know, in your explanation you  
21 talked about a single blood drop on say the wrapping paper?

22 A Uh-huh.

23 Q Let's say there are three separate blood

1 but one drop wasn't enough to perform the different enzyme  
2 testing. Your lab would not at that time have combined  
3 those together and then done the testing?

4 A No, sir. Whatever was reported, was  
5 reported from a single sample.

6 Q And you never were aware of Fred Zain at  
7 least in the cases you supervised him, ever engaging in  
8 that practice of combining--

9 A No, sir.

10 Q -- different types together? Different  
11 samples together?

12 A No, sir.

13 Q When he would perform the testing in this  
14 case, would you necessarily have watched him go through the  
15 whole process or would you come in at the end and look at  
16 the gel together with him?

17 A I would primarily look at the final result,  
18 not necessarily see every single step.

19 Q Also I think you stated, but I just wanted  
20 to make it clear, you know, you gave your explanation about  
21 how serological testing can tell the difference between  
22 mixtures and a single source. I think you mentioned if the  
23 blood was smeared, would you at least initially be

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1 concerned that that's a mixture if the blood was smeared as  
2 opposed to a single drop?

3 A I would pay a little more attention to the  
4 patterns in the results.

5 Q What is it about a smear that would make you  
6 think that it's at least, you know, you need to be a little  
7 more concerned about the possibility of a mixture versus a  
8 single drop?

9 A Because a smear is more likely to be a  
10 mixture. In other words, you could have a blood stain and  
11 smear another blood stain on top of it and there wouldn't  
12 be any way to tell that. Whereas, a drop is a distinct  
13 pattern and it would be very difficult for a drop to be on  
14 top of a drop without it being very obvious. A smear on  
15 top of a smear, I mean, there's no indication of what  
16 you've got. For a drop to be on top of a drop, there would  
17 be something obviously visible.

18 Q At that time, and again this is December of  
19 '79, at least beginning December of '79, did the laboratory  
20 have a procedure in place where all of your testing  
21 serologically were photographed?

22 A We had the capability of doing it, but I  
23 don't believe it was done on a routine basis. I mean,

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1 there was some work done in that regard, but as far as  
2 every single sample being done, no, I don't believe so.

3 Q And going back to your analysis of the  
4 statistics, in your opinion, then, it is appropriate to,  
5 when you're-- let's make it more specific. Let's say you  
6 have a blood drop from the crime scene and you find an ABO  
7 PGM type and let's say the ABO type is the same as some of  
8 the known possible donors of blood at that crime scene, but  
9 the PGM is different from any of the known possible donors.

10 Under that set of facts, in your opinion, it  
11 is appropriate for statistical purposes to multiply the,  
12 you know, the percentage of the population having that  
13 particular ABO type times the percentage of the population  
14 having that particular PGM type?

15 A Right.

16 Q So you would include the ABO type even  
17 though it's the same as some of the known possible donors  
18 of blood at that crime scene?

19 A Right, because the probability is a total  
20 probability and you take all of the characteristics and  
21 include those.

22 Q Okay. Let me just look at one more thing  
23 here and I may be done here. (Examines documents.) Were

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1 you involved in any way in that whole Zain investigation?

2 A No, sir.

3 Q Okay. So no one ever contacted you?

4 A Well, I was contacted once about two years  
5 ago by the Kanawha County Prosecutor's Office in regard to  
6 this particular case and that was the only contact I had  
7 whatsoever.

8 Q Okay.

9 A Until you came into it.

10 Q Okay. Do you have any recollection about  
11 what that was about, that conversation was about?

12 A Basically, I was asked since I had signed  
13 the report, I was asked if I supervised the work and I  
14 stated that I had and that I had seen all the results and  
15 basically this had-- they didn't see a problem with that  
16 and that was the end of it.

17 Q Okay.

18 A That was the only contact I had at all.

19 MR. SIMMONS: Okay. That's all.

20 EXAMINATION

21 BY MS. KERSHNER:

22 Q Mr. Murphy, would it be fair to state that--  
23 and I believe you did state this more or less, that the

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1 investigating officers on the Reggett murders were pretty  
2 certain that they had their man when they arrested Mr.  
3 Reggett?

4 A Yes.

5 Q Would there have been any advantage to you  
6 or to Mr. Zain to have found results that indicated that a  
7 person other than Mr. Reggett or the three victims were at  
8 the home at the time of the murders?

9 A No, actually, that would have been to our  
10 disadvantage because finding that kept the investigation  
11 open and if we hadn't found that, everything would have  
12 been cut and dry. It would have been over.

13 Q In fact, did you or Mr. Zain experience any  
14 difficulties as a result of the results you did find?

15 A I wouldn't call it difficulties, but we did  
16 have to convince the detachment commander, the South  
17 Charleston detachment commander, that the investigation was  
18 not over, that there was another person and Mr. Reggett  
19 had not planted blood at the scene and that they needed to  
20 be looking for someone else, and there was resistance  
21 because they felt they had the person responsible.

22 Q Okay. Did you take the lead in that  
23 persuasion or was Mr. Zain also involved in that?

1.

No. *CR. 80-F-121*

THE CIRCUIT COURT

of Kanawha County

JANUARY Term, 19 80

STATE OF WEST VIRGINIA

VS.

PAUL REGGETTZ, III

Indictment for

FELONY - MURDER

A True Bill:

*Daily G. Sullivan*

Foreman of the Grand Jury

Attest:

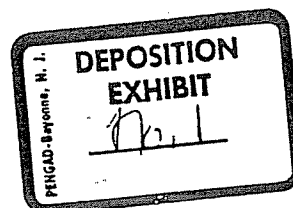
*James E. Roark*

JAMES E. ROARK

~~XXXXXXXXXXXXXX~~

Prosecuting Attorney

Kanawha County, West Virginia



Kanawha County  
**OFFICE OF THE PROSECUTING ATTORNEY**

Kanawha County Judicial Building  
111 Court Street, Charleston, W. Va. 25301  
(304) 357-0300  
FAX (304) 357-0342

WILLIAM C. FORBES  
Prosecuting Attorney

November 22, 1994

Lonnie Simmons, Esquire  
DiTrapano and Jackson  
604 Virginia Street East  
Charleston, WV 25301

RE: Moss v. Trent  
94-MISC-663

Dear Mr. Simmons:

Enclosed please find a copy of the serological records from the West Virginia State Police in the above-referenced case. This is the raw data that Judge MacQueen directed be delivered to you.

I am also submitting copies of this data to Judge MacQueen and to the Circuit Clerk to enclose in the case file. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script, reading "Mary Beth Kershner".

Mary Beth Kershner  
Assistant Prosecuting Attorney

cc: Hon. A. Andrew MacQueen, Circuit Judge  
Hon. Cathy Gatson, Circuit Clerk

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1 A He was involved. I took the lead, but Fred  
2 Zain was involved in that, too, because he basically backed  
3 me up in saying, "Look, you can't sweep this under the  
4 carpet. There is something here that you need to pursue."

5 MS. KERSHNER: Okay. I don't have anything  
6 further.

7 MR. SIMMONS: That's all. You have the  
8 right to review this once she types it up. It's like a  
9 deposition, or you can tell her you're willing to waive  
10 your signature and, if you'd like, I'd be glad to send you  
11 a copy of it when it's done if you want it, but it's up to  
12 you. She needs to hear you say on the record one way or  
13 the other.

14 THE WITNESS: I would like to see a copy.

15 MR. SIMMONS: Are you willing to waive your  
16 signature?

17 THE WITNESS: Sure.

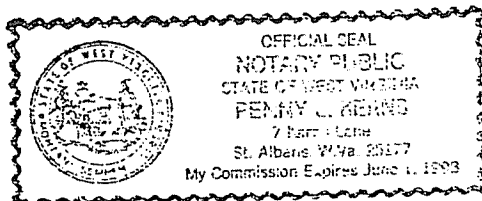
18 MR. SIMMONS: Okay. I'll send you a copy.

19 THE WITNESS: I want to be cooperative. I  
20 don't have anything to hide and I want to see that things  
21 turn out the way they should turn out.

22 MR. SIMMONS: I appreciate your help here.  
23 I just hope this doesn't become a habit.

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1 (WHEREUPON, the deposition was  
2 adjourned at 11:35 a.m.)



## REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, To-wit:

I, Penny L. Kerns, a Notary Public within  
and for the State of West Virginia, duly commissioned and  
qualified, do hereby certify that the foregoing deposition  
of ROBERT MURPHY was duly taken by and before me under the  
West Virginia Rules of Civil Procedure, at the time and  
place and for the purpose specified in the caption thereof,  
the said witness having been duly sworn by me to testify  
the whole truth and nothing but the truth concerning this  
matter in controversy.

I do further certify that the said  
deposition was correctly taken by me by means of the  
Stenomask; that the same was transcribed by me or under my  
supervision, and that the said transcript is a true and  
accurate record of the testimony given by said witness.

I do further certify that I am not connected  
by blood or marriage with any of the parties to this  
action, am not a relative or employee or attorney or

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counsel of any of the parties, nor am I a relative or  
employee of such attorney or counsel, or financially  
interested in the action, or interested, directly or  
indirectly, in the matter in controversy.

It is stipulated and agreed that the  
signature of the witness is hereby expressly waived to the  
foregoing deposition.

Given under my hand this 24th day of May,  
1995.

My commission expires June 1, 1998.

*Penny L. Kerns*  
Penny L. Kerns, CCR  
Notary Public



Division of Public Safety  
(West Virginia State Police)  
725 Jefferson Road  
South Charleston, West Virginia 25309-1698

Gaston Caperton  
Governor

Colonel Thomas L. Kirk  
Superintendent

November 9, 1994

Mary Beth Kershner  
Kanawha County PA Office  
111 Court Street  
Charleston, WV 25301

Dear Ms. Kershner:

Enclosed you will find the material requested regarding the John Moss, III case: reference number C-79-2566.

The enclosed documents are photocopies of the microfilm file. The enclosed documents represent the complete microfilm file.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. A. Smith", is written over a horizontal line.

T. A. Smith, Supervisor  
Biochemistry Section

TAS/daj  
Enclosure

000002

MOSS, JOHN

C-79-2566

SUSPECT: HOMICIDE

EXAM: SGT. R. C. MURPHY FOR TPR. TERRY  
WILLIAMS, SO CHAS.

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1 according to the way the attorneys have attempted to  
2 develop that evidence. And I've told you that they would  
3 attempt to develop that evidence. So, that is why I'm  
4 going to turn the case over to counsel for the making of  
5 opening statements.

6  
7 OPENING STATEMENTS

8  
9 (For the State)

10  
11 By Mr. Revercomb:

12  
13 May it please the Court. Ladies and gentlemen of  
14 the jury, on December 13, 1979, this man, the defendant,  
15 entered the home of the Paul Reggett family down in St.  
16 Albans. Paul Reggett was at work. His wife, Vanessa,  
17 and two children, Paul Eric and Bernadette Lynn, were in  
18 the back bed room of that house that day.

19 This is perhaps the most horrifying crime that  
20 was ever committed in this State. John Moss brutally  
21 murdered Vanessa Reggett, Paul Eric Reggett, and  
22 Bernadette Reggett. He did it all for a .22 rifle and  
23 a .22 pistol, a camera, a set of flatware, and a few  
24 dollars.

1 As introduced before, my name is Steve Revercomb  
2 and I'm an Assistant Prosecuting Attorney, and along with  
3 Ms. Lusk, we'll be representing the State of West  
4 Virginia and the people of this County in this case.  
5 I'll also introduce to you Mr. Nelson Bickley, Tim  
6 Huffman, and Kathy Beckett, the defense counsel for the  
7 defendant, John Moss, who is also here present.

8 Now, you jurors have been summoned here for an  
9 important duty. I'm here to represent the good people  
10 of this County, the citizens of this County, and you are  
11 to determine whether John Moss is guilty or innocent of  
12 three counts of murder in the first degree. Your duty  
13 is to apply the facts. You are the jurors and judges of  
14 the facts that come from the witness stand, and to apply  
15 the law that Judge MacQueen will tell you about. He'll  
16 instruct you on the law. But you are the judges of the  
17 law and you are sworn to follow that law. You jurors are  
18 the judges of the facts.

19 Now, the charges that come to you through the  
20 Kanawha County Grand Jury -- the Grand Jury meets and  
21 they decide whether to indict people.

22 I'll tell you right up front that the fact that  
23 they have indicted John Moss, or anyone else for that  
24 matter, is not to be considered evidence of their guilt.

1 I am telling you that now, and I'm sure Mr. Bickley and  
2 the other defense counsel will tell you that. I'm sure  
3 the Judge will read to you an instruction on that point  
4 of law. The fact that one is indicted is not to be  
5 considered by you all as evidence of guilt. An  
6 indictment is a formal instrument setting a person for  
7 trial by a jury of his peers.

8 At this time, I'll read the Indictment, so please  
9 bear with me.

10 "The State of West Virginia, Kanawha County, in  
11 the Circuit Court of the aforesaid County, the Grand Jury  
12 of West Virginia, in and for the County of Kanawha, now  
13 attending said Court, upon their oaths present that John  
14 Moss, Jr., also known as John Moss, III, on the blank day  
15 of December, 1979, and in the said County of Kanawha, did  
16 feloniously, maliciously, willfully, deliberately,  
17 premeditatedly and unlawfully slay, kill and murder one  
18 Paul Eric Reggettz in violation of Chapter 61, Article  
19 2, Section 1 of the West Virginia Code, 1931, as amended,  
20 against the peace and dignity of the State.

21 "Count 2: The Grand Jurors aforesaid, upon their  
22 oaths aforesaid, further present that John Moss, Jr.,  
23 also known as John Moss, III, on the blank day of  
24 December, 1979, and prior to the date of the filing of

1 this Indictment in the said County of Kanawha, did  
2 feloniously, maliciously, willfully, deliberately,  
3 premeditatedly and unlawfully slay, kill and murder one  
4 Bernadette Reggett, in violation of Chapter 61, Article  
5 2, Section 1 of the West Virginia Code, 1931, as amended,  
6 against the peace and dignity of the State.

7 "Count 3: The Grand Jurors aforesaid, upon their  
8 oaths aforesaid, further present that John Moss, Jr.,  
9 also known as John Moss, III, on the blank day of  
10 December, 1979, and prior to the date of the filing of  
11 this Indictment in the said County of Kanawha, did  
12 feloniously, maliciously, willfully, deliberately,  
13 premeditatedly and unlawfully slay, kill and murder one  
14 Vanessa Gail Reggett, in violation of Chapter 61,  
15 Article 2, Section 1 of the West Virginia Code, 1931, as  
16 amended, against the peace and dignity of the State.

17 "Found during the September Term of Court.

18 "Trooper Terry Williams of the West Virginia  
19 Department of Public Safety at South Charleston, West  
20 Virginia, who came before the Court to give evidence  
21 before that body, signed James E. Roark, Prosecuting  
22 Attorney."

23 Now, the burden of proof in a criminal case,  
24 you've already been told about this, and the burden of

1 proof is on the State in every criminal case. We accept  
2 our burden. The burden of proof is on the State to prove  
3 each and every element of a crime, beyond a reasonable  
4 doubt. The burden is one of reasonable doubt. The  
5 burden is not one of all doubt. We don't have to prove  
6 this case against this man against all doubt or beyond  
7 all possible doubt. We have to prove his guilt beyond  
8 a reasonable doubt, and a reasonable doubt is one based  
9 upon reason.

10 I ask you to keep in mind, as you listen to the  
11 evidence, what the word reasonable means because the only  
12 tools you have to determine what the truth is in this  
13 case is your common sense, your life experiences, and  
14 your sense of what is reasonable and what is not  
15 reasonable.

16 You have also been told, I believe, that briefly,  
17 there will be some circumstantial evidence in this case.  
18 And what circumstantial evidence is, it's one fact or one  
19 set of facts, or you can infer another set of facts, for  
20 instance I believe that Judge MacQueen used the example,  
21 if you are in the Jury Room looking out the window, you  
22 can see it raining. You can see the dark clouds come  
23 rolling in and puddles forming on the ground. That is  
24 direct evidence. You can see it raining.



1           However, if you've been in this Courtroom for two  
2 house and it was sunny when you came in here and someone  
3 comes to the door and comes in with a raincoat on and an  
4 umbrella with water dripping off of it, you can infer  
5 that it's raining outside. And that's a reasonable  
6 inference. That is circumstantial evidence.

7           But I would also ask you to pay attention in this  
8 case. Pay attention, because this is a very serious  
9 charge, the most serious charge that a jury can decide.  
10 This is not TV, ladies and gentlemen, this is real. What  
11 happened on December 13, 1979 is real. Remember that.  
12 A four year old girl is dead, a seven year old boy is  
13 dead, and their twenty-six year old mother is dead. I  
14 ask you to pay attention, because it's not like the case  
15 will unfold. We may call witnesses out of turn. There  
16 are bits and pieces of evidence that will arise.

17           The Judge has said that you're not allowed to  
18 take notes, so please pay attention to what is said.  
19 Listen to the testimony, whether you believe it or not,  
20 or how much of it you believe.

21           Some of the parts of this trial will be rather  
22 tedious; some exhibits and the photographs, certain  
23 witnesses will take maybe a whole day. Certain witnesses  
24 will be short. You will get tired, like everyone else

1 will, but I still ask you to please pay attention.

2 On December 13, 1979, Paul Reggett got up at  
3 approximately 1:00 a.m. to go to work. He worked the  
4 night shift at UPS in Rand. He lived in St. Albans, at  
5 7027 Chesapeake Avenue. He worked the shift from 2:30  
6 a.m. until 11:30 a.m. in the morning.

7 At about 1:00 in the morning, he got up, got  
8 dressed, and talked to his wife Vanessa. They had some  
9 coffee together. About a quarter until two, it was time  
10 to leave. He kissed his wife goodbye and left. He went  
11 to work. He worked all morning and got off at 11:30 a.m.  
12 He then went home, shortly after noon, or at about noon.  
13 He was expecting to meet his wife and daughter,  
14 Bernadette, at the intersection of Route 60 and Fourth  
15 Avenue in St. Albans, or near St. Albans. He expected  
16 to meet them there and they were going on together to K-  
17 Mart to look for a watch that he had seen advertised, for  
18 a Christmas present.

19 When he gets to the intersection though, they are  
20 not there. But it has been raining off and on, so he  
21 thinks maybe they are at the house because of the rain.  
22 So, he turns down Fourth Avenue and he goes to the house.  
23 He parks in the driveway between his house and his  
24 landlord's house, Mr. Fortson. He goes to the front door

1 and he knocks, but there is no answer. He walks around  
2 the back and looks at the back door. He goes to it and  
3 realizes that it is not shut all the way. He pushed it  
4 open. Immediately, he sees, some ten feet away from him  
5 -- the door is open to the kitchen, but he could see his  
6 wife's legs sticking out of the doorway between the back  
7 bed room and the TV room which is off the kitchen.

8 He rushes to his wife. She is lying in the  
9 doorway, a cord around her neck, one cord -- two cords  
10 around her neck. One cord extends up through a hold in  
11 the door where a door knob had once been. They didn't  
12 have a door knob on it that day. He also notices some  
13 scissors in her chest.

14 Ladies and gentlemen, his worst nightmare was  
15 just beginning. The nightmare would get worse -- much  
16 worse. He wondered immediately where his little girl  
17 was. He found his little girl hanging on the door  
18 separating the front bed room from the living room. He  
19 took her down from that door.

20 Paul Reggett found his son, Paul Eric Reggett,  
21 in the bathtub, face down, hands tightly bound behind  
22 him, with a cord coming up around his neck. All three  
23 were dead, just as surely as his wife was to meet him at  
24 noon on December 13, 1979.

1 Paul then left the house and had someone call the  
2 Police. Fourteen hours later, at approximately 2:30 a.m.  
3 down at the State Police Detachment in South Charleston,  
4 Paul Reggettzt confessed to killing them. He gave a very  
5 colorful and very graphic description of what he had  
6 done. He went so far as to say that he had put his  
7 little girl on the door because she liked to swing; he  
8 put his little boy in the bathtub because he liked to  
9 swim.

10 Also, later that morning, on December 14th, he  
11 returned to his home on Chesapeake Avenue, where Law  
12 Enforcement Officers demonstrated how he had murdered his  
13 family. There was only thing left out. Paul Reggettzt  
14 didn't kill his family. He didn't kill his wife and  
15 little boy or his little girl. The Police, at that time,  
16 had his confession. They'll tell you that as soon as the  
17 Police arrived that day, he didn't show much remorse.  
18 He wasn't hysterical.

19 You'll hear the time of death, established by the  
20 Medical Examiner. He'll say that the time of death is  
21 in the range, it's not exact, that it could have been  
22 between 12:00 midnight or five, six, or seven in the  
23 morning. Paul will tell you that he didn't leave for  
24 work until a quarter till two. The Police were sure they

1 had the killer.

2 Now, the case begins to unravel soon after that,  
3 because at the scene that day on December 13th, when the  
4 Troopers showed up and the Lab people showed up, the  
5 photographer showed up, a person from the Serology Lab,  
6 a person who is a forensic serologist, showed up along  
7 with a fingerprint man. The serologist, a man by the  
8 name of Fred Zain, the chief forensic serologist for the  
9 State -- he'll tell you that there was a lot of blood at  
10 the scene.

11 Vanessa Reggettz had an injury. We all know how  
12 a head injury is. For example, Fred Zain will tell you  
13 that he took his samples of blood from every blood stain  
14 in that house. He will tell you that he took those  
15 samples from this house, then he went back to the lab  
16 where he analyzed them. Of course, in the meantime, he  
17 had the known blood samples of the victim, the mother.  
18 He got a known blood sample of Paul Reggettz shortly  
19 thereafter.

20 He will tell you that the blood samples that he  
21 took from a drawer in the kitchen and from a flashlight  
22 in the TV room, from a Christmas package, some Christmas  
23 wrapping paper, blood samples from the door between the  
24 living room and the front bed room. He took blood



1 samples from that door, a change purse from the chest of  
2 drawers in the front bed room, a pillow case from the  
3 back bed room, a curtain on the back door, even the  
4 little pajama top that Bernadette reggettz was wearing  
5 when she was murdered.

6 He will tell you that when he took that samples,  
7 he analyzed them in the lab. He found samples of blood  
8 taken from all of these people that I've just listed,  
9 that did not match any member of the Reggettz family.  
10 The blood didn't belong to Vanessa, from the head wound.  
11 It didn't belong to Paul Eric. It didn't belong to  
12 Bernadette. And it didn't belong to Paul Reggettz.

13 So, the Police continued their investigation. On  
14 April 22, 1980, they traveled to Cleveland, Ohio, to take  
15 a blood sample from a young man. During the course of  
16 their investigation, at the time of these murders, this  
17 man was living with his grandfather, some one hundred to  
18 two hundred yards straight down the road from the  
19 Reggettz home. And shortly after the murders, after  
20 about a week, that young man returned to Cleveland. That  
21 young man, ladies and gentlemen, is sitting right here  
22 (Indicating), John Moss, the defendant. His blood was  
23 taken that day in April and brought back to Fred Zain,  
24 the serologist, and his blood was found to match the

1 blood found in the house.

2 Now, we all know about some bloodwork. Everyone  
3 has an ABO type; either O, A, or AB, or B. Trooper Zain  
4 -- or Lieutenant Zain will tell you that the bloodwork  
5 at the time, was broken down scientifically and  
6 forensically, and can be broken down to a number of  
7 samples, to nine genetic markers or enzymes, all  
8 independent of each other, which is important. Some of  
9 the blood samples that were taken from the house were  
10 taken from the curtains on the back door, from  
11 Bernadette's pajama top, from Christmas wrapping paper,  
12 I believe the Christmas package. And those blood samples  
13 were able to be broken down by Fred Zain into those nine  
14 genetic markers. And one at a time -- that blood exactly  
15 matched John Moss's -- the genetic markers, those nine  
16 genetic markers, in the sample of blood.

17 And Fred Zain will further tell you that the  
18 combination of those nine genetic markers found in the  
19 defendant's known blood and on those exhibits, the  
20 exhibits that I just listed, occur in three of every ten  
21 thousand people, point zero three percent of the  
22 population in this State. Three in every ten thousand.  
23 Fred Zain will further tell you that some of the other  
24 samples, the other ones I listed, for lack of sufficient

1 sample or whatever reason, he was able to break it down  
2 into seven of the nine genetic markers. And again, he'll  
3 tell you that those seven genetic markers found on those  
4 exhibits matched right down the line to the defendant's  
5 known blood.

6 Fred Zain will tell you that that combination of  
7 those seven genetic markers occurs in one of every  
8 thousand, twenty-one percent.

9 On October 28, 1980, Trooper Williams and Trooper  
10 Smith, two investigating officers in this case -- they  
11 traveled to Mansfield, Ohio, where they picked up John  
12 Moss to bring him back here to West Virginia. Along the  
13 way, they stopped at the Parkersburg Detachment of the  
14 State Police Detachment. On October 28, 1990, John Moss  
15 confessed to murdering Vanessa Reggett, confessed to  
16 murdering Paul Eric Reggett, and confessed to murdering  
17 Bernadette Reggett. And while his confession was not  
18 as colorful, perhaps, as Paul Reggett, it was more  
19 detailed.

20 There are some important details in his  
21 confession that aren't in Paul Reggett's. One of them  
22 was a camera. John Moss says he stole a camera from the  
23 Reggett household. The Police didn't even know that a  
24 camera had been stolen until John Moss told them about

1 it. He also told them about some flatware and some  
2 dishes -- actually, in his confession he said he stole  
3 some dishes from the residence. He said he murdered the  
4 family; went to the Christmas tree and opened the  
5 packages; and said he took one gift -- it was a set of  
6 dishes -- and he gave it to his best friend's mother for  
7 a Christmas gift. He took it home, rewrapped it, and  
8 gave it away.

9 The State will put on a witness and she'll tell  
10 you that she received the Christmas gift, which was one  
11 set of dishes and one set of flatware. There are a  
12 couple of details that are in John Moss's confession that  
13 were not in Paul Reggett's confession.

14 The defendant confessed twice. He confessed  
15 orally, and you'll hear about that. He also confessed  
16 on tape, and you'll get to hear his confession. In his  
17 confession, one thing he said, is that Vanessa Reggett  
18 cut him with a knife, and you'll hear about that.

19 More importantly, he says in his confession, he  
20 went into the Reggett home that night to steal, commit  
21 burglary. The reason that's important, ladies and  
22 gentlemen, we have in this State what is called felony  
23 murder. It's a rule of law that if a person commits a  
24 murder in the course of committing or attempting to

1       commit either a rape, a robbery, an arson or a burglary,  
2       then that person is automatically guilty of first degree  
3       murder. The State doesn't have to prove that there was  
4       any malice or premeditation or deliberation. The State  
5       has to prove that the underlying offense, in this case  
6       a burglary, was committed. Burglary is the breaking and  
7       entering of a dwelling, or entering without breaking of  
8       a dwelling, with the intent to steal. Along with the  
9       murder, that is a felony.

10               The State's evidence in this case will show that  
11       John Moss entered the Reggett home that night in the  
12       middle of the night with the intent to commit a larceny.  
13       We can prove that by his confession. He had already  
14       stolen two guns, some money, the flatware and the camera.

15               Once again, the felony murder rule is that if  
16       someone kills somebody, murders somebody in the attempt  
17       or in the commission of either rape, robbery, arson or  
18       burglary, they are automatically guilty of first degree  
19       murder.

20               What the jury is to decide is, if you find him  
21       guilty, is whether or not he gets mercy, whether or not  
22       he is entitled to mercy.

23               After the Moss confession, Paul Reggett was let  
24       out of jail and the charges against him were dismissed.

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1 I also note that on discovery, we received the  
2 report that has been filed with the Court. It appears  
3 that Randy Murphy -- and I think that's Randy Murphy's  
4 signature as opposed to Zain's -- I think in this  
5 particular case that he -- it's not necessary for the  
6 Prosecution to allow us to show what part he played in  
7 the analyses that were taking place, and what procedures  
8 were done in compliance with -- specifically, the  
9 procedures that were involved in the examination.

10 THE COURT: Yes.

11 MR. REVERCOMB: That's fine.

12 THE COURT: I think that's appropriate.

13  
14 WHEREUPON, the bench conference was concluded.

15  
16 (Back on the Record)

17  
18 THE COURT: Folks, we're going to give you about  
19 fifteen minutes. You've got plenty of time to go get a  
20 cup of coffee.

21  
22 (On the Record with the Jury Not Present)

23  
24 WHEREUPON, Fred S. Zain was duly sworn, and on



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1 his oath, deposed as follows:

2

3

DIRECT EXAMINATION

4

5 BY MR. REVERCOMB:

6

7 Q Would you state your name, sir?

8 A Fred Salem Zain.

9 Q Where are you currently employed?

10 A I am currently employed as the Chief of  
11 Physical Evidence of the Bayer County Crime Laboratory  
12 in San Antonio, Texas.

13 Q In 1979 and 1980, where were you  
14 employed?

15 A I was employed by the West Virginia  
16 Department of Public Safety, stationed in Criminal  
17 Identification Bureau at South Charleston, and was in  
18 charge of one of the identification units that handled  
19 physical evidence pertaining to the blood and body fluids  
20 and hair samples.

21 Q Is that called serology?

22 A Yes, that's correct.

23 Q You say that you were in charge -- what  
24 was your rank?

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Zain - Direct

1 A Lieutenant.

2 Q Were you involved in an investigation  
3 of the Reggett murders back in December of 1979?

4 A Yes, sir, I was. I was called in to  
5 process the crime scene at the particular residence of  
6 the Reggett family.

7 Q And did you collect samples at that  
8 scene?

9 A Yes, sir, I did.

10 Q And were some exhibits submitted to  
11 you?

12 A Yes, they were.

13 Q Who performed the analysis on those  
14 exhibits?

15 A I did.

16 Q I see a Sergeant Murphy's signature on  
17 this report, dated June 10th of 1980. Is it your  
18 testimony that you performed these analyses, too?

19 A Yes, sir. Sergeant Murphy, at the  
20 time, was in charge of a section, and we both counter-  
21 signed reports. And I processed all of the evidence that  
22 was submitted to me at the serology section at the time.

23 The reports were either issued by himself or  
24 myself after conferring as to what should be issued in

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Zain - Direct

1 a report.

2 Q But it is your testimony that you  
3 performed the analysis?

4 A Yes, that's correct.

5 Q And what training had you received at  
6 that time in performing -- to perform such analysis?

7 A My formal education was a degree in  
8 biology, with a minor in chemistry.

9 I also received an Associate Degree in Police  
10 Sciences, and specialized training at the FBI academy at  
11 Quantico, Virginia, relating to the specific field of  
12 forensic science, and more particularly, serology, or  
13 tests and methods utilized in the identification of blood  
14 and body fluids.

15 Both basic and advanced courses were obtained by  
16 me from the FBI Academy and other specialized training  
17 sessions that I had attended, as well as scientific  
18 organizations which I belong to, such as the Southern  
19 Association of Forensic Scientists, and other peer  
20 groups.

21 Q At the time, in 1979, how long had you  
22 been a forensic serologist?

23 A I transferred from the Department of  
24 Natural Resources in 1976, where I was a chemist and a

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Zain - Direct  
conservation specialist.

With a background still relating to the different types of analysis, I received specific training and designation at the CIB in the capacity which I spoke of. I was hired specifically to develop and implement forensic serology techniques for the State Police.

Q You examined the blood in this case by in 1979 for scientific testing procedures -- or testing was done?

A The methodologies were: One, I would take a staining that would identify ABO type on the stain, which was called the Howard-Martin Absorption Elution technique.

Secondly, to identify electrophoretic protein enzymes from blood staining by a method of electrophoresis. Those were, and still are, the routine blood typing techniques which are used, as well as scientific ways.

Q At the time of this murder, did you obtain any serology samples for your department?

A Well, what was utilized was a PGM subtyping system, which was utilized at the time, as well as other cases in this time frame, and additional blood blocking tests were made routinely, also, such as

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Zain - Direct

1 haptoglobin and gesc-typetesting, that were used during  
2 this time period also.

3 Q You, yourself, have used these methods?

4 A With the methodology and techniques  
5 were used, it not only was refined for these particular  
6 blood-typing systems, but there was evolutions occurring  
7 in the scientific arena where a variety of blood-typing  
8 tests were being utilized that never had been before.

9 For example, the primary blood-typing systems  
10 that were utilized in 1976 was one ABO blood-typing,  
11 which was used for years. And secondly, a protein enzyme  
12 type typing called biregular PGM, or phosphoglucomutase;  
13 and also another method of EAP, or erythrocyte acid  
14 phosphatase, was used. These are abbreviations for  
15 blood-typing systems.

16 So, any additional blood-typings other than those  
17 were not routinely used or developed at the State Police  
18 lab until after I was hired.

19 Q And you implemented those prior to your  
20 testing in this case?

21 A Yes, that's correct.

22 MR. REVERCOMB: May I have a moment, please, your  
23 Honor?

24 THE COURT: Sure.

Zain - Direct

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1 MR. REVERCOMB: I have nothing further at this  
2 time, your Honor.

3  
4 CROSS-EXAMINATION

5  
6 BY MR. HUFFMAN:

7  
8 Q Mr. Zain, you testified that you  
9 actually did the analysis that was presented here in this  
10 particular case; is that correct?

11 A Yes, sir, that is correct.

12 Q So, how long after these scrapings were  
13 obtained was the analysis performed?

14 A Within the next day or so.

15 Q So, the fact that the report is dated  
16 in June, that doesn't indicate that's how long it was  
17 before the actual analyses were done; is that correct?

18 A That's correct.

19 Q At the time, whenever you performed  
20 these analyses, which would have been in late 1979, or  
21 in early 1980, it was a multi-system of electrophoresis  
22 used by the State Police?

23 A Yes, sir.

24 Q Was that the particular method that was



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Zain - Cross

1 utilized in this case?

2 A... These systems were run singularly and  
3 multi.

4 Q Did you utilize the four-and-one  
5 method, which was a derivative of the multi-system  
6 approach?

7 A No.

8 Q You didn't use that method?

9 A No, sir. The PGM subtyping system was  
10 utilized as a singular system, and that is how it was  
11 originally introduced by the people that developed the  
12 technique.

13 Q Was the multi-system technique,  
14 utilizing that system, which I believe you -- that  
15 Drexall had done studies on?

16 MR. REVERCOMB: Your Honor, I'm going to object  
17 to this. This should be done in front of a jury. It's  
18 like discovery, and it ought to be done in front of a  
19 jury. I don't see the purpose of it.

20 MR. HUFFMAN: Judge, the purpose of it is, in  
21 1979, the testimony has been that there was a fairly --  
22 even though Mr. Zain hasn't said it yet, this method of  
23 typing blood was well accepted within the scientific  
24 community. I don't know that that's particularly the

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Zain - Cross

1 case.

2 In fact, I have a decision from 1988 from the  
3 State of New York, as well as one from the State of  
4 Michigan, in which it was decided in 1989, which  
5 questions this particular method of typing blood. There  
6 was some question raised in both of those particular  
7 cases as to whether or not there was particular  
8 reliability in that.

9 In fact, one of the fellows who apparently is an  
10 expert in the field, testified that there was some  
11 question as to this method of the typing of blood. In  
12 both the New York case and the Michigan case, that formed  
13 the basis of a reversal, because there was some question  
14 as to whether or not a specific scientific foundation  
15 under the Erye case a bit later, established by the  
16 Prosecution. I don't think they've identified ---

17 THE COURT: I'll let him testify.

18

19 BY MR. HUFFMAN:

20

21 Q What laboratory controls were utilized  
22 whenever you actually did this analysis?

23 A Internal and external quality control  
24 standards were used in all testing.

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Zain - Cross

1 In reference to the multi-systems, the two points  
2 that you raised are, there was a controversy as to time  
3 and place, which was totally nullified as to the people,  
4 or qualified people, who were actually running the  
5 analysis.

6 The particular systems and the qualifications of  
7 the systems have been upheld and have no longer been in  
8 controversy in any manner.

9 Q How late do you recall the controversy  
10 to be? When was it you recall the controversy within the  
11 scientific community was resolved?

12 A In the beginning, or at the inception  
13 of the technique, that was simply due to the  
14 nonfamiliarity of the new system. And also, the main  
15 point is that these systems were run individually and  
16 separately. The multi-system was used simply in  
17 conjunction with, and not as a sole source. So,  
18 therefore, the analysis that was reported was done on  
19 independent, singular systems which have nothing to do  
20 with the multi-system technique.

21 Q So, what you're telling me is that all  
22 of the items you identified were done on the singular  
23 system?

24 A That's correct.

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Zain - Cross

1 Q Were all of the tests repeated by  
2 someone else?

3 A The tests were read and looked at by  
4 both people working in the area at the time. The  
5 scientific method was followed completely.

6 Q Were photographs made of the actual  
7 plates?

8 A No. We did not have photographic  
9 capabilities in-house at that time.

10 Q So, at this point in time, there is no  
11 way to actually review the results of the typing that was  
12 done; is that correct?

13 A Other than the report itself, that is  
14 correct.

15 Q And the report itself, you think is  
16 conclusory as to what was specifically obtained; is that  
17 correct?

18 A The results of the tests were reported  
19 as they were done, and confirmed.

20 Q And that is the report that was signed  
21 off on by Sergeant Murphy; is that correct?

22 A That's correct.

23 Q Were there any documents that were  
24 available or were there any kept in 1979 relating to the

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Zain - Cross

1 maintenance of the machine that was utilized in the  
2 testing?

3 A Maintenance, as far as equipment used  
4 in electrophoresis, consisted of a tank and power supply.  
5 It either works or it doesn't work.

6 Q What you are telling me is that there  
7 were no records kept as to either of the machines that  
8 were utilized; is that correct?

9 A What I'm telling you is that it's not  
10 really a machine on which records need to be kept. The  
11 power supply either works a hundred percent, or it  
12 doesn't work at all. The results are either positive or  
13 negative. There is no gray tone of interpretation.

14 The PH buffers are commercially bought and  
15 standardized by lot number, and everything is  
16 standardized and maintained to the specificity of the  
17 manufacturer.

18 Q But you all didn't manufacture the  
19 machine; is that correct?

20 A No, sir, we did not make the  
21 electrophoresis machines.

22 Q And you didn't work on them, either, at  
23 that time?

24 A An electrophoresis tank is a plastic

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Zain - Cross

1 tank that you put some buffer solutions in, and you place  
2 a jello-type slab of substance on it, and put some blood  
3 stains in it, and it shoots the power through it to  
4 separate out the blood into some specific components.  
5 The interpretation of what those components are is  
6 reported, and those are compared to standards that are  
7 used in every comparison that is made.

8 Q Were there any controls utilized to  
9 account for the effects of the crime scene contaminants?

10 A Crime scene contamination on bloods are  
11 primarily such that would affect ABO typing, but  
12 therefore, controls aren't used at the crime scene, and  
13 are utilized on each analysis of ABO typing.

14 Q ABO typing is different than what we're  
15 talking about, electrophoresis, is that correct?

16 A That's the only time contamination  
17 would interfere in any way, shape or form because of the  
18 sensitivity.

19 Q Then you would agree with the Supreme  
20 Court opinion from Michigan where they reversed the Court  
21 in the case because there weren't sufficient controls for  
22 contamination of the crime scene; is that correct?

23 A No, sir. What I'm saying here, was  
24 that on protein enzyme analysis, what they are referring



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Zain - Cross

1 to is controls which are really standards that are used  
2 on every plate for an exact comparison of what you are  
3 trying to identify. You do not try to identify unknowns  
4 by not having known standards, and I believe what they  
5 mentioned is controls as referred to as standards. And  
6 those were used on every protein enzyme that was  
7 identified.

8 Q Is it not possible that certain enzymes  
9 are affected by contaminants, and could cause a false-  
10 positive reading?

11 A A false-positive -- there could be an  
12 interpretation made, for instance, if sodium chloride is  
13 viewed on whole blood which was not found at the crime  
14 scene, there could be alterations that would totally  
15 destroy or denature a blood typing that may be  
16 interpreted incorrectly by a non-experienced individual,  
17 whereby the protocol and the proficiency that we used at  
18 the State Police crime lab in the mid-'70s through the  
19 '80s including now, are of the highest proficiency. And  
20 that is why there were proficiency tests that were done  
21 in-house, as well as out of State.

22 So, the quality control would be maintained in  
23 such instances as criminal cases because of the  
24 importance of the standards, the scientific methods, and

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Zain - Cross

1 the closest scrutinization of quality control was  
2 utilized at the bureau, and still is today.

3 Q And that was based upon your  
4 recollection, and not based upon any independent.---

5 A It was based upon what I worked at and  
6 what I was in charge of. The protocols that I set forth  
7 as the standards to be used, based on what was accepted  
8 across the United States in over three hundred sixty-five  
9 crime laboratories, as of which now I am in charge of  
10 one, they used the same protocols and standards that are  
11 accepted, not only by law peer groups, but in the Court  
12 systems in the United States.

13 Q Do you recognize Dr. Benjamin Grunbaum  
14 as an expert in electrical phoresis?

15 A No, not in the field of  
16 electrophoresis.

17 Q What would you recognize him as an  
18 expert in?

19 A He was an expert witness for Beckman  
20 Industries Instruments.

21 Q He didn't -- Dr. Grunbaum is not the  
22 author of a book, of a handbook, for the  
23 individualization or analysis for the individualization  
24 of blood stains?

Zain - Cross

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1           A           Professor Grunbaum is in a precarious,  
2           and has been, in a situation working for a private  
3           company in projecting that company's image and the  
4           instrumentation that they sell, which is the way his  
5           interpretations assert methodologies and techniques,  
6           because they are different than what could be utilized  
7           in a particular situation.

8           Q           Professor Grunbaum happens to disagree  
9           with you and most other lab technicians on the type of  
10          electrophoretic testing; doesn't he?

11          A           I'm not a lab technician. Secondly,  
12          I'm not ---

13          Q           I'm not addressing you as a lab  
14          technician.

15          A           You stated lab technician. I'm just  
16          simply saying that Dr. Grunbaum has been perjured on the  
17          stand, because of the unreliability of his testimony.

18          Q           That's your opinion?

19          A           That's my opinion.

20          MR. HUFFMAN: Judge, I have no further questions.

21          THE COURT: So, you're objecting to his being  
22          offered?

23          MR. HUFFMAN: I don't question per se, Mr. Zain's  
24          qualifications. I don't think that the State has

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1 complied with our own evidentiary requirements to perform  
2 a foundation.

3 I don't think, as an expert, that he, himself --  
4 I'm not even sure he says that he is. I'm sure that he  
5 will say that he's been accepted in the scientific  
6 community, but it requires some independent testimony  
7 other than him as to an expert to testify in this case.

8 MR. REVERCOMB: Judge, that's simply not true.  
9 He cites two opinions from other states. They are States  
10 in which the Supreme Court has upheld blood testing in  
11 several cases.

12 MR. HUFFMAN: Judge, I might point out that there  
13 is a difference between blood testing and ABO typing and  
14 blood testing for the purpose of excluding an individual  
15 in a paternity case, and attempting to use certain types  
16 of blood testing to put an individual in a category in  
17 a criminal case.

18 THE COURT: I understand. I'm not sure that I'm  
19 grasping -- you're suggesting that he's got to lay a wide  
20 foundation for the process itself?

21 MR. HUFFMAN: I think he does. I think the  
22 record is that it is required. I think the State, in  
23 order to lay the proper foundation, has got to supply  
24 evidence other than the expert who is going to testify

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1 and say that it is acceptable in scientific communities,  
2 this method of doing precisely what they're offering  
3 evidence for.

4 THE COURT: So, the expert himself can't testify  
5 to that?

6 Is there some law to that effect? The last case  
7 we had to that effect was that bite mark case that Dr.  
8 Sopher did, in which he identified -- he testified about  
9 that field of forensic examination and laid a foundation  
10 himself.

11 MR. HUFFMAN: I don't know if that was objected  
12 to, your Honor.

13 THE COURT: No, as a matter of fact, I don't  
14 think it was.

15 MR. HUFFMAN: But that wasn't the precise -- the  
16 Michigan case that I referred to is People v. Young,  
17 decided in 1985.

18 MS. LUSK: Judge, I know we've got a drug case in  
19 West Virginia where the lab, the chemistry expert from  
20 the lab, testified to the reliability of the methods  
21 which he used in identifying, I believe it was,  
22 marijuana. There wasn't any independent expert called  
23 in to state that this particular method of identifying  
24 controlled substances was reliable in the community. She

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1 testified to it herself.

2 THE COURT: What other cases do you have?

3 MR. HUFFMAN: Judge, just note my objection.

4 THE COURT: I'm going to allow it.

5 Do you all want to take a five minute break  
6 yourselves?

7

8 WHEREUPON, the Court stood in a recess in the  
9 hearing of this case.

10

11 (Back on the Record with the Jury Present)

12

13 THE COURT: Go right ahead.

14 (To the Jurors) He's already been sworn.

15

16 DIRECT EXAMINATION

17

18 BY MR. REVERCOMB:

19

20 Q Would you please state your name, sir?

21 A Fred Salem Zain.

22 Q Mr. Zain, where are you currently  
23 employed?

24 A I am employed as the Chief of Physical



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1 Evidence with the Bayer County Crime Lab in the Court  
2 Examiner's Office in San Antonio, Texas.

3 Q Previous to that, where were you  
4 employed?

5 A I was employed as a member of the  
6 Department of Public Safety here in West Virginia. I was  
7 stationed at the Criminal Identification Bureau in South  
8 Charleston, and was the Lieutenant in charge of the  
9 identification unit which received and examined physical  
10 evidence, such as blood, body fluids, hair samples, and  
11 such for examination.

12 Q Is that called the serology section?

13 A That's correct.

14 Q In what capacity were you employed  
15 there?

16 A I was the Lieutenant in charge of a  
17 particular unit, in charge of training and development  
18 of that particular unit, from the time I came into the  
19 Department of Public Safety until the time I left.

20 Q And how long were you a State Trooper?

21 A For over thirteen years.

22 Q Would you tell the jury and the Court  
23 your qualifications?

24 A My formal education is, I have a

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Zain - Direct

1 Bachelor of Science degree in Biology, and a minor in  
2 Chemistry.

3 I have an Associate Degree in Applied Sciences  
4 from Marshall University. Also, I've got a Master's  
5 Degree in Biological Sciences from Marshall University.

6 I've done graduate work involved in the field of  
7 sciences, both biological and social sciences. I'm also  
8 an Associate Professor at the University of Texas, where  
9 I teach criminalistics. I'm also a guest lecturer and  
10 I continually lecture at a variety of colleges in the San  
11 Antonio area, as well as the State of West Virginia.

12 I have spoken at the West Virginia University  
13 Medical College routinely, as well as -- I have performed  
14 at the inception and development of legal investigation  
15 seminars, which are developed by the legal examiner  
16 system in the State of West Virginia.

17 Q Go ahead.

18 A My peer group associations -- I am a  
19 member of the Southern Association of Forensic  
20 Scientists. I am a member of the Canadian Society of  
21 Forensic Scientists. I am a member of the American  
22 Academy of Forensic Scientists.

23 Also, I hold memberships and work with the  
24 International Society of Electrophoresis, the

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1 International Society of Hemogenetis, the Academy of  
2 Criminal Justice Scientists, and the American Society of  
3 Blood Banking. I'm also a Certified Peace Officer with  
4 the State of Texas, and I'm an advanced instructor for  
5 law enforcement in the State of Texas, and am in charge  
6 of two training programs, one with the Sheriff's  
7 Department in the County in which I am employed, as well  
8 as the San Antonio Police Department.

9 I'm also -- have made application for and  
10 acceptance to the International Association of  
11 Identification and am also a member of the American  
12 Association of Crime Laboratory Directors. I think that  
13 covers the peer groups.

14 As far as publications, I've published papers  
15 specifically regarding electrophoresis analysis and blood  
16 typings and genetic marker identification, using multi-  
17 systems and single systems in the State of West Virginia  
18 for six years, which was a survey of not only case  
19 studies, but whole bloods. And I was published with the  
20 American Academy, Journal of Sciences.

21 I have written other papers with regard to  
22 methodology and techniques used in forensic serology and  
23 personal lectures which have been given as far as the  
24 collection of evidence at the crime scene and surveys of

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Zain - Direct

1 crime scene processing, and even presently I am  
2 continuing to give lectures pertaining to physical  
3 evidence.

4 I have also been in charge of training programs  
5 which were developed with the West Virginia State Police  
6 and include the people that are now presently employed,  
7 in doing the work and serological techniques at the  
8 Police Criminal Identification Bureau.

9 Primarily, that generally sums up my  
10 qualifications.

11 Q Have you been trained in the field of  
12 DNA testing?

13 A Yes, sir, I've had specific training at  
14 the Canadian Society of Forensic Sciences Center in  
15 Toronto, Canada. I have also had specialized training  
16 with the Connecticut State Police at Westhaven University  
17 in New Haven, Connecticut. I also have specific training  
18 and instruction with the Analytical and Genetic Testing  
19 Center out in Colorado, where I helped put on a DNA  
20 workshop for criminal litigators for DNA testing, and  
21 for paternity testing, as well as, our crime laboratory  
22 does DNA testing and processes criminal and civil cases  
23 independently.

24 Q Have you ever testified as an expert in

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1 the field of forensic serology before?

2 A Yes, sir, I have testified in  
3 approximately forty-eight counties in the State of West  
4 Virginia and surrounding states, including Florida and  
5 Texas, regarding any and all serological techniques, be  
6 they basic serology or advanced techniques involving DNA  
7 analysis.

8 Q You have testified an expert in DNA  
9 analysis?

10 A Yes, sir, I have.

11 Q What are the tests that you use in  
12 processing cases in your work as a forensic serologist?

13 A The primary tests are examinations used  
14 in serology that are either visual tests and exams or  
15 chemical tests. Chemical tests give you an idea of  
16 whether something is positive or negative, and you can  
17 continue on with that process as far as -- you obtain as  
18 much information as possible.

19 For example, all of the methods and techniques  
20 that are utilized in forensic today are accepted, not  
21 only in forensic scientific community, but in the general  
22 scientific community as it relates to forensic evidence  
23 or clinical evidence. The development of processes, even  
24 as of today, have been developed from clinical

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processing.

A lot of the origin of electrophoretic techniques were developed in Europe in the 1940s and '50s, that pertain to paternity testing, that have to do with the biological father of a child, for example. These techniques were utilized and implemented into the forensic community and standardized across the United States. The same thing, right now, is being done.

The primary two areas are one, abuse of a microscope for determining an ABO type, because you can visually see it through a microscope, whether it is positive or negative, and whether you are an A, a B, an AB, or an O, from a stain.

And second, is to use a method of electrophoresis, which is a long name. It means a very simple process. Electrophoresis, very simply, is a jello-type substance is put on the last plate. You put a portion of the stained item on that jello, then you pass through the jello a current which separates out the particular blood stain or body fluid.

Q Like an electrical current?

A Yes. That would sort out the blood stain into some components that you can add some coloring agents to and receive the patterns. If you see any



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1 banding patterns, they may match up or they may not. If  
2 they match up, then it's a positive identification. And  
3 if it doesn't match up, it's different, and that's  
4 exactly how it's reported.

5 For example, if you get three drops of a person's  
6 blood and then you add three specific substances, one  
7 will react to an A blood type, and one will react to a  
8 B blood type, and one will react to an O blood type. The  
9 same thing is the method of electrophoresis. You use  
10 standards. You use quality control so that you don't  
11 misinterpret anything that may be available. And when  
12 the results are issued, they are either positive or  
13 negative as far as the conclusion of whether they match  
14 or not.

15 Q Are these tests accepted within  
16 scientific communities?

17 A Yes, sir, they are.

18 MR. REVERCOMB: Your Honor, at this time, I would  
19 ask that Mr. Zain be qualified as an expert forensic  
20 serologist.

21 THE COURT: Subject to the defendant's -- noting  
22 the defendant's objection, he may be permitted to testify  
23 at this point.

24 MR. REVERCOMB: Thank you, Judge.

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1 BY MR. REVERCOMB:

2  
3 Q Now, Mr. Zain, I want to call your  
4 attention to December 13, 1979, and ask you if you recall  
5 being at the scene of a triple murder?.

6 A Yes, sir. At that time, I was  
7 stationed at headquarters, and as I mentioned previously,  
8 I was directed through the Company B to go to a  
9 particular residence to process a crime scene.

10 Q Do you remember where that location  
11 was?

12 A It was in the St. Albans area. I  
13 forget the exact location, but it was a residence of the  
14 Reggett family.

15 Q At what time, approximately, did you  
16 arrive?

17 A To the best of my recollection, it was  
18 after noon, probably around 1:00 o'clock, or so. I know  
19 that once I got there, the processing of the crime scene  
20 went on through the evening until about dark.

21 Q For what purpose were you called there?

22 A Specifically, I was designated to go to  
23 the crime scene, one, to collect any physical evidence  
24 that may be available at the scene for testing and

Zain - Direct

1 analysis.

2 Q And in general terms, what do you look  
3 for at the crime scene?

4 A My specific job capacity would have  
5 been to look for hairs, fibers, and blood stains. And  
6 seeing how it was all at the crime scene, the primary  
7 physical evidence around and through the house which I  
8 inspected was a majority and variety of blood staining.

9 Q Did you find that blood stain at the  
10 Reggett home that day?

11 A Yes, sir. There was blood staining in  
12 the majority of the rooms of the residence, as well as  
13 on the outside of the residence.

14 Q Did you take samples of the blood  
15 stains and objects that had blood on them from the scene  
16 that day?

17 A Yes, sir. I collected, I believe,  
18 seventeen items from the crime scene, myself, personally,  
19 as well as I received other items of evidence that were  
20 submitted for analysis at the time, from Trooper Smith  
21 and Trooper Williams. And also I received other items  
22 internally from other people in reference to this  
23 particular case.

24 Q Do you have a list of all of the items

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1 which you took from the scene in 1979?

2 A Yes, sir. I've got a copy of my report  
3 that was issued, that you gave me, as well as the items  
4 that I reported.

5 MR. REVERCOMB: Your Honor, I would like  
6 permission to request Trooper Zain to step down and point  
7 on the chart where he took these items and samples.

8 THE COURT: Fine.

9 MR. REVERCOMB: Your Honor, I'm referring  
10 Lieutenant Zain to Exhibit 147.

11

12 BY MR. REVERCOMB:

13

14 Q First of all, Mr. Zain, does this  
15 Exhibit 147 accurately depict the layout of the house as  
16 you found it on December 13, 1979?

17 A Yes, sir, I did a -- it looks like a  
18 pretty accurate drawing, or a non-scale drawing which I  
19 made at the time, of the crime scene, which would more  
20 or less give me a quick orientation of the samples I  
21 made. I've got the same format here, where the items are  
22 marked, are pretty evident.

23 You've got item number one which is right here  
24 (Indicating). It was in this one bedroom area, where

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Zain - Direct

1 there were pieces of a knife, a broken knife, laying  
2 around this area, is number one.

3 Number two was a sample that I removed from the  
4 pool of blood where Vanessa Reggettz was lying, or where  
5 she was when I came into the residence.

6 Example number three was a portion of bloody  
7 carpet which I removed from this area, which I didn't  
8 assume anything at the time, but it was the second larger  
9 pool of blood in the home.

10 Q What room was that in?

11 A That was in the front bedroom which is  
12 close to the -- right next to the living room.

13 Q And it also was Reggettz' blood?

14 A Number four was blood from a bed in the  
15 front bedroom, this area (Indicating), where the little  
16 girl was lying, where she was placed.

17 Number five was a pillow case, also from the  
18 front bedroom.

19 Number six was the electrical cord which was  
20 removed from around Vanessa Reggettz' neck. She was hung  
21 up on the door right here (Indicating).

22 Number seven was a curtain that was on the back  
23 door. The curtain had slight blood staining present on  
24 it.

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Zain - Direct

1           Number eight was a sample from the sheet in the  
2 kitchen floor. Number eight was right here (Indicating).

3           Number nine was a sample from outside the back  
4 door, below the door handle, on this same door, on the  
5 outside, below the door handle, there was some blood  
6 staining smears. They weren't drops or splatters; it was  
7 like somebody had shoved the door. If you have a cut  
8 finger, it would leave a smear as you are going out or  
9 coming in, one or the other.

10           Number ten -- there was a blood smear on the edge  
11 of the sink, which I removed a portion of it.

12           Number eleven is the same, only from the utensil  
13 drawer in the kitchen.

14           Number twelve is a pillow case from the bedroom  
15 situated right here (Indicating), where the son was.

16           Number thirteen is a sample from the door which  
17 was right in this area (Indicating).

18           Number fourteen was a sample of blood from the  
19 door area, right here (Indicating).

20           Number fifteen was from a change purse that was  
21 on a dresser.

22           Number sixteen was from an item that was located  
23 here (Indicating) in the stack of clothes that was piled  
24 up right in this area near the closet and the doorway.

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1 And number seventeen was also in that same  
2 locale.

3 Those were the majority of items that I either  
4 physically removed the item if it was moveable, or  
5 extracted it or took a portion of blood stain that may  
6 have been present on any of the items there. There were  
7 other items that were blood-stained which I can identify  
8 later, but these were the items that I personally  
9 removed, taking into my care and custody through the  
10 analyses, until the work was done on them.

11 Some of the items, because they were extracted,  
12 say, for example, from an item there wasn't a blood stain  
13 on, something that could be tangibly removed, I just  
14 removed a small portion for use during the analysis. And  
15 it's like having a blood stain on a piece of thread.  
16 We'd use the thread for analysis and then there isn't any  
17 thread left.

18 But some of the items were returned to the  
19 investigating officer and some of them were not.

20 Q Okay, you may take your seat now.

21 Before we go on Trooper, or excuse me, Mr. Zain,  
22 item seventeen, the jockey shorts -- is that correct?

23 A Yes.

24 Q Where was that found in regard to the



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Zain - Direct

1 bodies?

2 A It was underneath the pile of clothes,  
3 and I designated that as such in the report. I  
4 specifically stated jockey shorts found under pile of  
5 clothes in the master bedroom.

6 Q Mr. Zain, I want to now hand you what  
7 has been marked for identification purposes as State's  
8 Exhibit 108, and ask you if that corresponds to any of  
9 the exhibits which you removed from the house on December  
10 13, 1979?

11 A Yes, sir. This is the first item which  
12 I mentioned. On the outside, it's -- I'll hold it so it  
13 won't come through the plastic. On the outside of the  
14 bag, the normal procedure is to mark the item, but more  
15 specifically, to designate a case number. That way we  
16 specifically know where and when the item was picked up,  
17 because that's how all items are submitted to the bureau,  
18 whether I did the investigation at the crime scene or  
19 someone else did.

20 And then, below that is the initials of the  
21 person that analyzes the evidence or collects it. And  
22 the FSZ is, of course, my initials. The case number for  
23 this State's Exhibit 108, which will remain consistent  
24 through all of the items, except for supplemental, which

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Zain - Direct

1 was 79-2566. That's the official case number that was  
2 given to these particular items at the bureau.

3 Q I refer your attention more closely to  
4 the piece of knife blade there. Please describe its  
5 condition as it appears today.

6 A Except for the coloration since the  
7 last time I saw this item of evidence, it remains and  
8 appears to be in similar condition as it was the last  
9 time I saw it. You can see, actually, on the blood  
10 stain, the total mass of blood stains present. There are  
11 two little clear places. It might be a little rough for  
12 you to see, but right here and right here (Indicating),  
13 there's a clear space where there isn't any blood.  
14 That's because those are the areas of the knife that I  
15 actually removed some of the blood stain from for testing  
16 purposes.

17 Q And once you were through with the  
18 processing of this, who did you return it to?

19 A Like the majority of the items, they  
20 remained in my sole care and custody, and I returned them  
21 to Trooper Williams, who was one of the major  
22 investigating officers.

23 Q Do you recall when that was?

24 A I believe it was on March 31, 1979, the

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1 majority of the items were turned over to him.

2 Q March of '79 or March of '80, Mr. Zain?

3 A I'd say March of '80.

4 Q I want to hand you what's been marked  
5 for identification purposes as State's Exhibit 35, and  
6 ask you if that photograph depicts where that knife was  
7 found?

8 A Yes, sir, that's the specific area by  
9 photo representation that I pointed out on the crime  
10 scene sketch there. The larger portion of the knife is  
11 right at the edge of the blood stain, and there are other  
12 scattered pieces of the knife which are also around the  
13 piece, yes, sir.

14 Q All right. Thank you. I now want to  
15 hand you what has been marked for identification purposes  
16 as State's Exhibit 110-B.

17 Would you examine that and tell us what it is?

18 A It's a portion of cut cord that I  
19 examined, Exhibit 110-B, and my initials are on the cord  
20 as to when I received it, and it would have been in  
21 another bag with whatever -- other than just being loose.  
22 But it also was removed and appears to be in similar  
23 condition since the last time I saw it.

24 Q Does that comport with item number six

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Zain - Direct  
1 on your chart?

2 A Yes, it does.

3 Q This was in your care, custody and  
4 control while you were examining it?

5 A Yes, sir.

6 Q Who did you return it to?

7 A I also returned it to Trooper Williams.

8 Q Now, I want to hand you what has been  
9 marked for identification purposes as State's Exhibit 115  
10 and ask you to look inside that envelope and tell us what  
11 that consists of?

12 A It's State's Exhibit 115. It  
13 corresponds with my marked item number up here in the  
14 corner with the case number C-79-2566, and my initials.  
15 The marks are still on the item, the change purse,  
16 inside. You can see right in this particular area there  
17 is -- you may not be able to see it too good, but that's  
18 a hole right there (Indicating), and that's where I  
19 removed some of the blood stain that was present.

20 And it appears to be a small drop of blood or so  
21 on the change purse, but it appears to be in similar  
22 condition which the last time I saw it.

23 Q And do you recall where that was  
24 recovered?

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Zain - Direct

1 A I believe that was on the dresser in  
2 the front bedroom. It also remained in my care and  
3 custody until I returned it to Trooper Williams.

4 Q I now hand you what has been marked as  
5 State's Exhibit Number 79, and ask you to look at that  
6 photograph and see if you can identify the change purse?

7 A Yes, sir. On the dresser, on the left  
8 side, right about in this area (Indicating) there appears  
9 to be the purse that we're looking at.

10 Q I will now hand you what has been  
11 marked for identification purposes as State's Exhibit 109  
12 and ask you to take that out, and tell the jury what that  
13 is?

14 A First of all, State's Exhibit 109, it  
15 was referred to in my report as item number seven, and  
16 that was a curtain from the back kitchen door which I  
17 spoke of earlier. On the outside of this envelope, you  
18 have got the case number which was originally issued.

19 Also, I want to point out so that it won't be  
20 confusing, there is another number on there that says FD  
21 89-445, also with my initials, and the date, 12/15/89.  
22 That was when I had looked at this when the crime  
23 occurred and rechecked some of the blood staining for  
24 additional technical analysis that was not available ten

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1 years ago.

2 On the curtain itself, you have a large cutting  
3 that was taken in this area right here (Indicating),  
4 where there was some blood staining and some smears.  
5 This was done specifically for DNA analysis, but there  
6 was additional blood testing done here (Indicating)  
7 originally, which was reported in this report.

8 Also on the curtain, is the same case number and  
9 there were some other cuttings from, like right through  
10 here, which I'll stick my finger through to show you.  
11 There was blood staining in this area, and also in this  
12 area (Indicating).

13 And when I originally pointed out that it appears  
14 to be similar in condition to which I recently last saw  
15 it, and the original cuttings that were made on it were  
16 made by me, even though it was ten years later. And it  
17 originally looks to be the same as when I removed it from  
18 the residence.

19 Q After your initial examination of this  
20 item in 1979, who did you return it to?

21 A It also -- after I was finished and the  
22 evidence was picked up, it was picked up by Trooper  
23 Williams at the same time as was originally designated,  
24 on the 31st of March, 1980.

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Zain - Direct

1 Q You say you later received it back; who  
2 did you receive it from?

3 A Also Trooper Williams. He sent it to  
4 the crime laboratory in Texas, because there was not the  
5 availability to do the type of testing in this State.  
6 He sent it to us and we tried to do DNA testing on it.  
7 There was DNA material present in the blood stain, but  
8 the grade or the condition was such that we were unable  
9 to get any additional information. It had just been too  
10 long since the occurrence, plus it would have probably  
11 preserved the evidence in a frozen condition. That would  
12 have been the best way to keep it from ten years ago.

13 The technology on DNA testing wasn't even heard  
14 of, much less being tried on forensic evidence then. We  
15 still thought we would try and see if we could possibly  
16 gain some additional information.

17 Q I don't know if I asked you this, but  
18 State's Exhibit 115, the change purse, did you also  
19 return that to Trooper Williams?

20 A Yes, sir.

21 Q State's Exhibit 63 is a photograph. I  
22 would ask you if that depicts the curtain which you just  
23 testified to?

24 A Yes, sir. It shows the same areas of



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Zain - Direct

1 blood stains, which I stuck my finger through that one  
2 place, which is in this area here (Indicating), on the  
3 curtain. And that's a pretty good photo-likeness of the  
4 item at the house.

5 Q That's the item that was found?

6 A Yes.

7 Q Prior to your processing it?

8 A Yes, that's correct.

9 Q Now, I want to hand you what has been  
10 marked for identification purposes as State's Exhibit 41,  
11 and ask you what this photograph depicts?

12 A State's Exhibit 41 is the blood  
13 staining smear on the door. This is the door between the  
14 back bedroom and, I think they call it a family room, if  
15 I'm not mistaken. And that would be the sample or item  
16 number thirteen which I believe I referred to in my  
17 notes. It was a large blood stain which you can see from  
18 the photo, near where Mrs. Reggett was found.

19 Q I now hand you what has been marked for  
20 identification purposes as State's Exhibits 54 and 55,  
21 and ask you to tell the jury what these photographs  
22 depict.

23 A Those particular two photographs are  
24 the same door area; one is just a little larger than the

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Zain - Direct

1 other, but there is blood stains and smears on it, that  
2 appears on the edge of this doorway.

3 And if my memory serves me correctly, that would  
4 be -- I removed a blood stain from that particular area  
5 which was referenced as a sample from the door between  
6 the -- what I call the master bedroom and the front door,  
7 or the front door area, if I'm not mistaken.

8 That would have been item number fourteen, which  
9 I referred to in the picture up there.

10 Q Is that the master bedroom, the front  
11 bedroom?

12 A That's correct.

13 Q I now hand you what has been marked for  
14 identification purposes as State's Exhibit 46, and ask  
15 you what this photograph depicts?

16 A This is the photo, State's Exhibit 46,  
17 which is a sample from the kitchen sink area. You can  
18 see that there is a reddish color blood stain present on  
19 the edge, as well as water staining. This blood stain  
20 has been moist or it has been possibly some detergent or  
21 whatever may have been intermingled with it, but it's  
22 diluted. It isn't just a blood smear, straight-out. And  
23 I believe we weren't able to identify it, other than  
24 being blood, although it looks to be a whole there.

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Zain - Direct

1 That's the sample I removed from the kitchen  
2 sink. I believe that was listed as item number ten.

3 I might say that the sample, like I was  
4 explaining earlier, the samples that were removed, such  
5 as from that particular area, a small portion of it was  
6 removed and that was used during the analysis, and the  
7 remainder of the blood stain, of course, remained on the  
8 scene or whatever the blood was deposited on originally.

9 Q State's Exhibit 51?

10 A This is the drawer in the kitchen that  
11 I made reference to. Item number eleven is a sample from  
12 the utensil drawer in the kitchen. It's right here in  
13 this area. You can see the reddish color stain, and  
14 that's on State's Exhibit 51, of that particular item.

15 I also removed a small portion of that stain and  
16 it was used during analysis.

17 Q State's Exhibit 57, for identification  
18 purposes?

19 A This is the sheet that was lying in the  
20 middle, or lying in the walk-through area of the kitchen.  
21 It pretty much depicts the accurate position of where the  
22 sheet was. There was a couple of things that were strewn  
23 about, some spoons or some utensils lying on the sheet.  
24 I identified some blood staining which you can actually

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1 see. You might be able to see a small portion of the  
2 blood stain on the sheet right about in this area right  
3 here (Indicating).

4 But on State's Exhibit 57, it's what I made  
5 reference to as example number, or item number eight.

6 Q State's Exhibit 73?

7 A State's Exhibit 73 is the sample which  
8 I removed from the bed spread in this area (Indicating).  
9 It was on the bed where one of the children was lying,  
10 and that was item number four in my report.

11 Q Is there any other blood visible in  
12 this photograph?

13 A Yes, sir.

14 Q What I made reference to was example or  
15 item number three in my report, a sample from the carpet  
16 area, right in this area (Indicating). That is what I  
17 was talking about earlier. That's also on the board up  
18 there.

19 Q Finally, I'll refer you to the upper  
20 right corner. It's hard to see in the photograph. See  
21 if there is any other blood in that photograph.

22 A There is. You can see it by shadow of  
23 the pillow on the far side away from the child, in this  
24 area right here, there is a blood stain on the pillow,

Zain - Direct

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1 and that also, was referred to as a pillow case from the  
2 front bedroom, or item number five.

3 Q I now hand you what has been marked for  
4 identification purposes as State's Exhibit 5. What does  
5 this photograph depict, if you know?

6 A This is an enlargement of Exhibit No.  
7 5, which shows the outside back door. The blood staining  
8 which I made reference to primarily in the report, is  
9 this small portion of the blood which I removed below the  
10 handle, right there (Indicating). That's on the outside  
11 of the house. When I made reference that I collected it,  
12 that was inside and outside of the house, this is what  
13 I was referring to. But that's the item which I marked.

14 Item number nine, which I specifically stated was  
15 a sample from the outside of the back door, is below the  
16 door handle.

17 Q Now, Mr. Zain, I want to hand you what  
18 has been marked for identification purposes as State's  
19 Exhibit 158, and ask you if you've seen this exhibit  
20 before?

21 A Yes, sir, unfortunately. This has got  
22 my initials on the outside, with a ballpoint pen. You  
23 can hardly see it here (Indicating).

24 These particular items, a pair of scissors, is

1091

Zain - Direct

1 what I removed -- personally removed from Vanessa  
2 Reggett's chest at the crime scene, by direction of Dr.  
3 Sopher.

4 Q Who did you give this exhibit to at  
5 that time?

6 A Well, that exhibit remained in my  
7 direct care until I removed a blood sample from the  
8 scissors myself, and then it was turned over for printing  
9 to the latent print section.

10 Q Do you remember what date that was?

11 A No, sir, not specifically. The blood  
12 sample was removed probably that day or the next, and  
13 immediately turned over and handled as a latent print  
14 item. But because I had removed it from the victim  
15 personally, then I just went ahead and retained it to get  
16 the blood sample, the biological sample, off the item  
17 before it might have been denatured.

18 Q Who did you give it to?

19 A It was given to Corporal Shumate, with  
20 the latent department.

21 Q Who is now a Lieutenant?

22 A That's correct.

23 Q I believe you've already testified that  
24 you received some items back and that you tried to do

1092

Zain - Direct

1 some DNA testing?

2 A There were several items that were  
3 submitted to the crime laboratory, which is an  
4 independent crime laboratory in San Antonio, Texas. They  
5 were submitted to possibly obtain additional information  
6 pertaining to this case that was not available to be done  
7 by any crime laboratory ten years ago.

8 What we did was check the blood staining that was  
9 available on the items that were submitted. The blood  
10 staining was extracted to determine if DNA banding  
11 patterns could be identified. There was material  
12 present, but it's what was called "low molecular weight"  
13 size, which was inappropriate for identification  
14 purposes. That material had degraded to the point where  
15 no further analysis could be performed on it.

16 Q So, your results of the DNA testing  
17 were what?

18 A The results of our banding patterns  
19 were negative, or inconclusive. None were obtained.

20 Q I want to call your attention to  
21 December 14, 1979. Did you have occasion to see the  
22 clothing identified as belonging to Paul Reggett?

23 A Yes, sir, I received a -- on December  
24 14, 1979, quite a variety of clothing that I received



Zain - Direct

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1 from Trooper Williams. It consisted of -- it would be  
2 easier to go down the list here: Two pairs of brown  
3 pants, one shirt worn from work -- I'm going to read to  
4 you specifically what was submitted -- two pairs of blue  
5 jeans, one work glove, one pair of brown suede boots, one  
6 blue jean jacket, one pair of white athletic socks, one  
7 pair of brown work pants, two pairs of long underwear,  
8 one thermal underwear shirt, one white T-shirt, one pair  
9 of white jockey shorts, one tan workshirt, one blue  
10 sweatshirt, one red bandanna handkerchief, and one blue  
11 toboggan.

12 All of these items were submitted as belonging to  
13 Paul Reggett, III.

14 Q I also ask you, on that occasion,  
15 December 14, 1979, did you receive any other items from  
16 Trooper Smith?

17 A Yes, sir. On that same day, I received  
18 from Trooper Smith, M. D. Smith, one blood specimen that  
19 was from Vanessa Reggett, and also a plastic bag  
20 containing the nightgown of Vanessa Reggett, which she  
21 had been wearing at the time of the particular incident.

22 Q I call your attention now to December  
23 17, 1979 and ask you what evidence pertaining to this  
24 case you received at that time?

1094

Zain - Direct

1           A           On December 17, 1979, I received a  
2 known blood specimen of Paul Eric Reggett, the son, the  
3 little boy, and a blood sample of Bernadette Reggett,  
4 the little girl. I received both of these items from  
5 Terry -- Trooper Williams, on December 17, 1979.

6           Q           Of all of the blood work which you  
7 received in this case, did you ever return it to the  
8 investigating officer?

9           A           No, sir. The whole bloods were  
10 utilized during analysis and kept for quite a long period  
11 of time in refrigeration until they were disposed of, as  
12 is normal protocol.

13          Q           Mr. Zain, I also want to ask you, or  
14 call your attention to December 18, 1979, and ask you if  
15 you had occasion to receive any evidence or exhibits in  
16 this case from Corporal Shumate?

17          A           Yes, sir. On December 18, 1979, I  
18 received some items that were also at the crime scene  
19 when I was there, that I did not process or physically  
20 take them in hand at the time, but we did take caution  
21 of the biological presence that was on them. It  
22 consisted of a flashlight, a Christmas package that was  
23 under the Christmas tree, and also some Christmas package  
24 wrappings, which were also around the Christmas tree.

1095

Zain - Direct

1           These items I received from Dave Shumate, of the  
2     latent print section.

3           Q           Lieutenant Zain, I want to hand you  
4     what has been marked for identification purposes as  
5     State's Exhibit 155, and ask you if you have seen this  
6     exhibit before?

7           A           Yes, sir, that's the particular item  
8     -- that's Exhibit 55 that was submitted to me by Trooper  
9     Williams as being the nightgown of Vanessa Reggett.

10          Q           That was submitted by Trooper Williams  
11     or Trooper Smith?

12          A           It was submitted by Trooper Smith, I'm  
13     sorry.

14          Q           Who did you return it to?

15          A           It also was returned to Trooper  
16     Williams on March 31, 1980.

17          Q           And did you conduct tests on this item?

18          A           Yes, sir. A variety of blood stains on  
19     the item were checked, and blood staining origin as to  
20     who it was originally from was identified.

21          Q           And I want to hand you what has been  
22     marked for identification purposes as State's Exhibit  
23     107. I'd like you to look at that.

24          A           This, also -- I've got it marked on

Zain - Direct

1096

1 here, the case number is in this area (Indicating), and  
2 my initials. This box had a glass bowl in it.

3 Q Who did you receive this item from?

4 A That was also received from Dave  
5 Shumate at the bureau for identification.

6 Q And who was it returned to?

7 A It was also returned to Trooper  
8 Williams.

9 Q And did you conduct tests on that?

10 A Yes, sir. There was a blood stain on  
11 the bottom part of the box, that I checked out, and  
12 reported.

13 Q State's Exhibit 106?

14 A This is a flashlight that was lying on  
15 a chair in the house that Shumate picked up. It's got  
16 my initials on the outside rim of the front part here  
17 (Indicating), which I marked at the time. That also was  
18 returned to Trooper Williams after I received it and  
19 tested it for blood staining.

20 Q I now hand you what has been marked for  
21 identification purposes as State's Exhibit 114?

22 A There, again, as I pointed out earlier,  
23 there is some double numbers here and initials. That's  
24 due to it being resubmitted to me for examination. It

1097

Zain - Direct

1 should just contain a variety of what we call Christmas  
2 package wrappings, with a variety of holes cut in here.  
3 Where the holes are cut, are primarily where the blood  
4 staining was identified. You can see there is still some  
5 apparent blood staining in this area right here.

6 And also, in this area here, these areas were  
7 tested the first time, where I gained the original  
8 information. And then also, I utilized the same areas  
9 of the blood staining where we tried to do the DNA  
10 testing. This is just one of the pieces of paper.

11 Q Are there also blood stains on this  
12 piece, too?

13 A Yes, sir. These, like I say, they're  
14 getting sort of worn out, but there is blood staining  
15 apparent, visible blood staining, in these areas here.  
16 You can see the cuttings, the holes in the paper that are  
17 small cuttings. That is where blood staining was  
18 identified.

19 We got some anhydrant spray from the latent print  
20 section. And these all remained in my care, custody and  
21 were returned to Williams the first time, then just  
22 recently received and returned back to him again.

23 Q Did you receive these from Corporal  
24 Shumate?

Zain - Direct

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1           A           I received them from Shumate, from  
2           internal, and then for re-exam. I received them from  
3           Trooper Williams and then returned them to him after I  
4           was done with them.

5           Q           Now, I hand you what has been marked  
6           for identification purposes as State's Exhibit 116, and  
7           ask you to examine that.

8           A           116-A, which you can tell is a child's  
9           item here, that I examined twice. The markings that are  
10          made on here now and labeled were areas that I marked in  
11          the photos for DNA analysis. But these items and the  
12          cuttings from this were made by me for testing purposes.  
13          It takes a little bit more blood staining, especially  
14          when it gets old, to try to identify DNA patterns. There  
15          is a variety of blood stains on this item.

16          Q           Was this item also tested in 1979 by  
17          you?

18          A           Yes, sir, it was.

19          Q           And in 1980, who did you receive this  
20          from?

21          A           I received that January 7, 1980 from  
22          Trooper Williams, and I also returned it to him on the  
23          same day that I returned the other items.

24          Q           On March 31st?

1099

Zain - Direct

1 A March 31, 1980.

2 Q I would hand you what has been marked  
3 for identification purposes as State's Exhibit 100, and  
4 ask you if you have seen this exhibit before?

5 A Yes, sir, I've got it marked on this  
6 piece of plastic here. The case number, my initials, and  
7 when we received it. This was one of the items that was  
8 examined, the flatware, or kitchenware, a box of  
9 stainless flatware. I received this from Shumate on  
10 February 6, 1980, and also returned it to Trooper  
11 Williams along with the other items on March 31, 1980.

12 Q I would like at this time to hand you  
13 what has been marked for identification purposes as  
14 State's Exhibit 63, I believe, and ask you to tell us  
15 what this -- oh, excuse me, number 64, and tell us what  
16 that photograph depicts?

17 A State's Exhibit 64 is a blood staining  
18 which, I believe that I was showing you on the paper  
19 there a while ago, the larger blood stain that was  
20 present at the time we were at the crime scene. That's  
21 the way it appeared to us as we were going through the  
22 house, looking at particular items, and that is one of  
23 the blood stains that was analyzed and reported.

24 Q That was done before you did your



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Zain - Direct

1 testing?

2 A That's correct.

3 Q Mr. Zain, I want to ask you if you had  
4 occasion on January 2, 1980, to receive the known blood  
5 of Paul Reggett, III, the father and husband?

6 A Yes, sir. I received that blood  
7 specimen from Mr. Reggett, because I received it from  
8 Trooper Williams.

9 I requested that a known blood specimen be  
10 obtained from the father, number one, because of the  
11 ongoing investigation, and number two, because the  
12 samples from the scene that I had removed showed that  
13 the blood staining did not originate from anybody at the  
14 house at that time, which left the question, because of  
15 the freshness of the blood staining throughout the home,  
16 and because it would be assumed that because there was  
17 only one person bleeding, and that would have been  
18 Vanessa Reggett, that when I identified the blood  
19 staining on a variety of the items throughout that house,  
20 and on the outside of the house, it did not originate  
21 from her.

22 Then I suggested that we start obtaining blood  
23 samples from any and all people that would have had  
24 access to the house, or could possibly have been involved

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Zain - Direct

1 in this particular crime, at which time Trooper Williams  
2 and Trooper Smith, being the primary investigators in the  
3 case, obtained the blood specimen of Mr. Reggett, and  
4 testing was done on his blood, which also excluded it  
5 from being his blood in the house.

6 Q What are you saying -- that after you  
7 received Mr. Reggett's blood, you still had a variety  
8 of blood samples that didn't match anybody in the  
9 Reggett family?

10 A What I'm saying is, there were a  
11 variety of blood stains that I had removed from the  
12 house, or identified on items from the crime scene, that  
13 could not have originated from Mrs. Reggett or either  
14 of the two children. So I requested a blood sample from  
15 the father, seeing as how he was the fourth person who  
16 had ready access to the house at any time.

17 The blood staining was not identified as being  
18 his. He was totally excluded, and there ensued obtaining  
19 or trying to find out where the blood came from, because  
20 the blood staining was fresh. It was on stuff that  
21 hadn't been there that long or could not have lasted that  
22 long on items that the blood was deposited on, and it  
23 indicated in the investigation that there had been blood  
24 staining deposited by another person, other than the

1102

Zain - Direct

people that we already knew about.

Q Do you have charts for selecting blood characteristics of the family members?

A No, sir, I don't. I've just got the report.

Q Do you ever make charts?

A Sure.

Q I'm going to hand you what's been marked State's Exhibits 143, 144, 145, and 146, and ask you to compare the blood on the members of the Reggett family. Would you do that for us? Show the jury?

A I can; it's not problem. It might be easier, instead of using a whole lot of these numbers and letters, if I could just put it on the board there.

Q That would be fine.

A It would be easier for everybody, and simpler, and I won't write anything contrary to what's on this. I just won't write as many things, to make it easier.

What I'll do is simply this: I'll mark it, using initials. There might be a conflict of initials, so I'll put mother, father, son, daughter, and use initials from there on.

You've got the primary victim from the standpoint

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Zain - Direct

1 of a person bleeding, known as the mother. You've got  
2 the daughter, designated as "D", and the son as the  
3 little boy, and on here, the father, Mr. Reggett -- I  
4 originally was going to do this so that you could relate  
5 to what I'm talking to you about today.

6 Everybody can associate with an ABO blood type.  
7 All of the people in the family were blood type O. One  
8 of the other blood typings -- all blood typings are  
9 separate and independent of each other -- in other words,  
10 the blood type O does not make -- anything else that I  
11 talk about is not necessary for any of these other blood  
12 typings nor any of the other blood typings necessary  
13 because of this particular one here. So, I'm just going  
14 to use one blood type.

15 I'm going to show you all why I requested a known  
16 blood specimen from Mr. Reggett and why I requested a  
17 known blood specimen, even after I analyzed his blood.

18 Another blood characteristic, which is called  
19 ESD, that's an abbreviation for extra-esteration-D blood  
20 type. They don't change. Everybody in here has got one;  
21 they don't change. They are not altered, they are  
22 genetically engineered, and they are inherited by what's  
23 Mendelian's Laws. You have three basic types of  
24 esterates. You have a 1, a 2, and a 2-1; that's how

Zain - Direct

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1 they're designated. Just like the blood types in an ABO  
2 are A, B, AB, and O.

3 The mother is blood type 1; the daughter, type 1;  
4 the son, type 1; and Mr. Reggett was type 1. The  
5 majority of the samples from the scene -- for example,  
6 the stain on the curtain, the sample from the kitchen  
7 drawer, the sample from the Christmas packages -- this  
8 is right at Christmastime -- the samples that were taken  
9 throughout the house, the doorframes and such, so, we're  
10 just going to call them questionable samples. We don't  
11 know where they came from. We're just picking them up.

12 Say, two were ABO type O, and they were of the  
13 Esterase-D type 2-1. Now, any way you cut it, that blood  
14 did not come from any of the people in the house. So,  
15 I recommended to the investigators that there was  
16 somebody else bleeding at approximately the same time  
17 that all of the other blood was being distributed in the  
18 house, and they needed to find out who it came from.  
19 That's where I left it.

20 From that point on, is when we ensued additional  
21 blood samples from a variety of different people that  
22 could possibly have been in the house and deposited blood  
23 there, or maybe not, I don't know. But that is the  
24 simplest form of even showing you that you can -- whoever

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Zain - Direct

1 deposited this blood excluded this whole family of  
2 leaving the blood in the house. One individual's blood  
3 type is very different from another individual's, and can  
4 be one hundred percent exclusive that that blood is  
5 coming from another individual. The more you try to  
6 exclude somebody as depositing blood somewhere, the more  
7 you include them as couldn't possibly contributing blood  
8 in a certain place.

9 In other words, the harder I tried to say that  
10 this blood didn't come from you, the more tests I run to  
11 show that it didn't come from you, if it doesn't exclude  
12 you, it makes it even that much more apparent that it  
13 probably did come from you.

14 That's all the purpose of forensics. It's not to  
15 try to catch somebody because you're trying to get all  
16 of the blood types. It's really in reverse of trying to  
17 exclude somebody as being the possible depositor of the  
18 blood stains, no matter what kind of forensics it is.  
19 But on these charts, you've got an ABO type, you've got  
20 an Esterase-D type, all of these other designations or  
21 additional blood characteristics that everybody has.  
22 They don't change. They're not altered, and they're not  
23 hard to identify. And these typings were not identified  
24 in Mr. Reggett's blood, and from Bernadette's, the little

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Zain - Direct

1 daughter's, from the father, and from the son.

2 You get a percentage of the population, that  
3 these people that the blood typings occur in, not how  
4 many people really have it, but they're not based on  
5 statistics, they're based on gene frequencies.

6 On a paper that I published in West Virginia,  
7 over six to eight years of work was based on a variety  
8 of blood samples; fresh blood samples, forensic blood  
9 samples -- they always were exactly compared to each  
10 other. If I analyze a very small sample size -- in other  
11 words, a very small blood stain on that back door that  
12 I showed you all, if I can only get one or two or three  
13 or four of these blood characteristics, it doesn't mean  
14 that blood's different, than if I get all nine of them.  
15 What it tells me is, if I only get half this many, I can  
16 only say that the blood stain still has some blood types  
17 identified on these. I just can't scientifically say  
18 that it is as good, because like I say, the more blood  
19 typings you get to try to exclude somebody as depositing  
20 blood, then you can narrow down the number of people that  
21 actually have that whole total amount of blood typings.

22 It's like, of course, to use as an example --  
23 approximately forty-five percent of the population are  
24 blood type O. Well, that's a pretty good large amount



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Zain - Direct

1 of people, but only three percent of the population are  
2 AB. So, if you've got somebody who's a type AB, then  
3 you've already excluded ninety-seven percent of the  
4 population, because that's just how the curve falls.  
5 It's genetically inherited, so you get all of these blood  
6 types together and you get a certain percentage. And I'm  
7 pretty sure they're going to have me testify to what the  
8 total combination of all of these blood types are.

9 But the key is that if the blood typings  
10 identified from the crime scene would have matched up  
11 with Mr. Reggett or the daughter or the son or the  
12 mother, it still wouldn't mean that it specifically, one  
13 hundred percent, came from that person. But it would say  
14 that it would be very highly likely that it did. But  
15 because there was not only just one blood type, which is  
16 all you need to say that it didn't come from anybody  
17 there, there were several blood typings that were  
18 different than what is found in the whole family  
19 scenario.

20 So, as soon as I identified the one blood typing,  
21 it was readily apparent to me that the investigation  
22 needed to occur, no matter what may appear on the surface  
23 at the time, to find out who was bleeding in the house.

24 It's a part of our job as being a State

Zain - Direct

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1 Policeman, to be investigators and to use investigative  
2 tools to try to find out as much information about a  
3 crime as possible, and this is what warranted us to  
4 continue the investigations at a more rapid pace. The  
5 longer time goes on after a crime, the more chances there  
6 are of losing physical evidence. That's exactly what our  
7 department did.

8 Q Mr. Zain, before we leave this subject,  
9 I see Paul Reggett's chart there. He's got nine blood  
10 typings?

11 A Yes, sir.

12 Q I guess the importance of all of this  
13 is that all of those are separate and independent from  
14 the others?

15 A That's correct. In other words, I  
16 could do a blood typing on you, and I could just type  
17 your blood for, say, what's designated at the bottom  
18 there, as GC, that stands for group specific component  
19 blood type, it's a big word for just blood type. I can  
20 identify what your GC is and it doesn't matter what that  
21 is compared to what your ABO type is, or any of these  
22 others that are on that board. And it's just as  
23 important as getting an ABO type. About the only time  
24 you work that in is because if you're A positive or B

Zain - Direct

1109

1 negative, or you worry about having kids because of your  
2 RH factor, and stuff like that.

3 Well, these other blood typings are not  
4 clinically important. In other words, if you have a  
5 transfusion or give somebody blood, these other blood  
6 typings aren't going to interfere. They're not going to  
7 be of any relevant importance from the standpoint  
8 clinically, but they are genetically important to  
9 forensic applications, and they are genetically important  
10 to population studies. They are sort of an added plus  
11 to find out an internal characterization of an  
12 individual. It's just like having brown hair or blue  
13 eyes, or long arms or short fingers, and things along  
14 this line. That gives you a physical makeup of what an  
15 individual looks like.

16 For blood characteristics, when used, and the way  
17 they're used forensically, and in population studies by  
18 anthropologists, give you an internal makeup of  
19 individuals of a certain area, and the study I did was  
20 on a thousand people and a thousand cases in the State  
21 of West Virginia. It shows that the population was  
22 primarily ninety-six percent caucasian and three percent  
23 black. And it confirmed the national gene frequencies  
24 that were being used scientifically in forensics and

Zain - Direct

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1 otherwise, of what was used in the crime laboratory at  
2 the time, and is now, the gene frequencies to give us an  
3 idea of what type of population or how many people, say,  
4 should have a certain set of blood typings are right in  
5 sync with what is across the United States.

6 Q Before going any further, was any blood  
7 found in the house that was consistent with the blood of  
8 Paul Reggett, III, the father?

9 A There was no blood stain in the  
10 residence or on any item that identified -- or that I  
11 tested that had any blood staining the same as Mr.  
12 Reggett's or anybody else, other than Mrs. Reggett, and  
13 the blood samples that I took from Mr. Moss.

14 Q And you've also testified that you had  
15 clothing submitted by Trooper Williams in December of  
16 1979 that was identified as belonging to Paul Reggett.  
17 Was any blood found on any of those items?

18 A No, sir, there was no blood that could  
19 be identified visually or chemically.

20 Q I want to call your attention to April  
21 22, 1980, and ask you if you had occasion on that date  
22 to see the known blood of the defendant, John Moss?

23 A Yes, sir.

24 Q Who did you receive that from?

Zain - Direct

1111

1 A I received a known blood sample of Mr.  
2 Moss's blood from Terry Williams on April 22, 1980.

3 Q And you compared his blood to the blood  
4 of the Reggettz family?

5 A It was tested, just like the other  
6 blood samples and stains that I had done. The blood  
7 typings which were identified were the same blood typings  
8 which I supplied from the samples from the scene.

9 Q One thing I think you testified about,  
10 one inconclusive marking can exclude a person?

11 A That's correct. If I were to check Mr.  
12 Moss's blood or that of anybody else and find that he is  
13 a blood type B, then there is no way he could have  
14 deposited the blood at the scene.

15 If he was an esterase type 1, there is no way  
16 that the blood could have come from him.

17 If he was any other blood typing than what I  
18 identified or what he is, it would have excluded him from  
19 being the depositor of the blood stain, at that place or  
20 anywhere else. But it didn't.

21 Q Was the blood identified consistent  
22 with Vanessa Reggettz's blood found anywhere at the  
23 scene?

24 A Yes, sir. I can tell you very quickly,

Zain - Direct

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1 I hope, on the items that I removed from the scene.  
2 Personally, all of the items -- I'll just go through  
3 these by item numbers, because there are right there on  
4 that board and you've talked about them several times  
5 already.

6 But items one through five, which is from the  
7 pieces of the knife, samples from the doorways, the  
8 carpet, the bedspread, and the pillowcase ---

9 Q Which pillowcase is that?

10 A That's the pillowcase from the front  
11 bedroom.

12 Also, number six, the electrical cord which was  
13 removed from around her neck. The sample from the sheet  
14 on the kitchen floor, which had a couple drops of blood.  
15 A sample from outside the back door, below the door  
16 handle, which is sort of unusual.

17 Q That was consistent with Vanessa  
18 Reggett's blood?

19 A That's right. I'm going to include  
20 everything that was on my sample that was hers.

21 There was a sample from the door between the  
22 bedrooms, and the living room.

23 Q The living room or the TV room?

24 A The TV room.

1113

Zain - Direct

1 Q Is that the door at which Vanessa was  
2 found?

3 A That's correct. And also, the medium  
4 white T-shirt was found under a pile of clothes in the  
5 master bedroom, and was the same as her blood.

6 Q It was underneath some clothes?

7 A Right. And then, of course, the known  
8 blood sample on her nightgown, which we've already talked  
9 about. All of those samples that I referred to had blood  
10 staining on them and the blood types which were  
11 identified were the same as hers.

12 The other items where there was human blood  
13 identified, and the identified characteristics -- or they  
14 were identified as being the same as Mr. Moss's, and that  
15 was from the sample from the door between the master  
16 bedroom, or what I called the master bedroom, the front  
17 bedroom, and the front door.

18 The change purse, a sample from the utensil  
19 drawer in the kitchen, the pillowcase from the bedroom  
20 beside the bath, the curtain from the back door, and  
21 you've got the flashlight, the Christmas package wrapping  
22 -- those items, if I'm not mistaken there might have been  
23 another one, but all of those, for sure, had blood  
24 staining on them of the blood type the same as Mr. Moss,



Zain - Direct

1114

1 and nobody else in the family.

2 Q Mr. Zain, what is meant by the term  
3 "consistent with blood samples consistent with a member  
4 of the family?" Does that mean that it is his blood?

5 A Consistent or not consistent is a way  
6 of reporting where you're not scientifically, at least  
7 at that time, you could not say the blood specifically  
8 one hundred percent came from an individual, unless you  
9 were there at the time the blood was deposited, or at  
10 least with a certainty that the type of blood, and the  
11 number of times you eliminated the vast majority of  
12 people -- the policy was, which I set forth, was to  
13 assure that reports were consistent or not consistent.

14 Q What does not consistent mean?

15 A Not consistent means that you one  
16 hundred percent exclude someone as being the possible  
17 depositor of blood or other body fluids.

18 Consistent means that all of the blood typings,  
19 whether you have one or whether you have nine, are  
20 consistent with what you are comparing to, and the person  
21 cannot be eliminated at all from the positive, depositing  
22 the blood or body fluids, if the same genetic markers are  
23 identified from item to the next, which make it  
24 consistent with each other.

1115

Zain - Direct

1 Q I have a hypothetical for you, Mr.

2 Zain.

3 Suppose an item, possibly a small amount of blood  
4 of person "X" and a large amount of person "Y", you found  
5 in a pool consistent with person "Y", in your testimony  
6 of what you would expect to find?

7 A I think I've used in this Court the  
8 analogy -- if you take a cup of water and throw it in the  
9 ocean, you are not going to be able to identify the cup  
10 of water. That's about as simple as you can say it,  
11 because you've got such a small portion of blood in a  
12 large portion of another blood, then you're not going to  
13 be able to identify it.

14 Q I want to again refer your attention to  
15 State's Exhibit 108, and I'll ask you to look at the  
16 biggest piece of the knife blade. I believe you've  
17 identified that as being a blood stain?

18 A Yes, sir.

19 Q Whose blood was that consistent with?

20 A That's the same blood type as Mr. and  
21 Mrs. Reggett.

22 Q If she had cut someone with that knife,  
23 would you expect to find the other person's blood on it?

24 A Well, it depends upon a variety of

1116

Zain - Direct

1 situations, but it's not really that complicated.

2 If you have one, you just cut somebody or you  
3 just cut at somebody and even though you may cut them,  
4 you're not going to have blood on that item which you cut  
5 them with. You have to have repeated exposure to an  
6 item, at least more than once, before you can have blood  
7 left on an item, particularly with a knife.

8 When you have a knife and it's just a cut  
9 through, it's primarily cutting through a variety of  
10 tissues, and the skin -- the skin is pretty tough. But  
11 when you cut through the first time, you've got to cause  
12 some bleeding to occur before blood can be left on  
13 something.

14 If you stab yourself when you're cutting an apple  
15 or something like that with a pocket knife, or when  
16 you're working in the kitchen, and you cut your hand, you  
17 cut your hand, but after you know that you've cut  
18 yourself is when you start bleeding, because there is no  
19 blood on the item that you cut yourself with.

20 Now, if you lay a knife down where you've got  
21 someone bleeding on it, then of course you're going to  
22 have blood deposited on it.

23 Q I believe you've already testified that  
24 the largest piece of that knife was found in a pool

Zain - Direct

1117

1 consistent with Vanessa Reggett's blood?

2           A           Yes, that's true. And it is showed by  
3 the photograph. But even if, for example, this was used  
4 to cut somebody; with the amount of blood that is present  
5 on here, and from the area that I assembled from, you're  
6 only going to identify one set or combination of blood  
7 typings. And even if you had a fifty-fifty mixture, just  
8 keeping it real simple, adding one person's blood to  
9 another person's blood and you mix them up, you put them  
10 on something, then by running the variety of blood  
11 typings which were run, we'd be able to differentiate as  
12 to the blood typings that were identified, no doubt.

13           Q           Mr. Zain, I'm going to have you what  
14 has been marked as State's Exhibit 152 for  
15 identification, and ask you to tell us what that is?

16           A           It's a card that just simply says the  
17 blood typings or blood characteristics that were  
18 identified from Mr. Moss's blood sample, which is  
19 depicted -- his blood type is O. I'll put that on the  
20 board.

21                   These other characteristics are abbreviated.  
22 They are protein enzyme-type blood characteristics. The  
23 PGM is 1-plus, 1-minus. . . There are ten blood  
24 characteristics in a PGM blood typing system, just like

1118

Zain - Direct

1 there is four in the ABO blood typing system. ESD was  
2 2-1, GLO-1 was type 2. The EAP type was a BA. The AK  
3 type was a 1. ADA type was a 1. The HP type was 2-1,  
4 and the GC type was a 1. These are the blood typings  
5 which I identified from the known blood sample. These  
6 typings were compared to the blood typings which were  
7 identified from the stains present at the crime scene  
8 which I mentioned earlier.

9 A variety of the stains, I was able to identify  
10 a majority of the blood characteristics. All of them,  
11 for comparison purposes, but on some of them, I was only  
12 able to identify -- which is quite a vast amount in  
13 itself -- let's say, seven out of nine. That's simply  
14 because for these two particular blood typing systems  
15 that are run individually and separately, you need a  
16 fairly large portion of the blood stain. And I think you  
17 all have seen what I tried to show you all on a variety  
18 of the items, either by a picture or by the items  
19 themselves.

20 A lot of samples that were present at the crime  
21 scene, there wasn't a whole heck of a lot of blood --  
22 just a smear of blood here, a drop of blood there. And  
23 you have to have a certain amount of blood, even when it  
24 is in the best condition, to be able to identify any

1119

Zain - Direct

1 information from it at all.

2 So, it doesn't make them different from each  
3 other; it just makes them -- we got more information from  
4 some blood stains than we did from others.

5 But the bottom line is, they still could not  
6 exclude Mr. Moss as being the possible contributor of the  
7 blood stains. And on the other hand it definitely  
8 excluded anyone else in that family from having deposited  
9 the blood at the crime scene.

10 Q Mr. Zain, I want to go through each of  
11 these items one-by-one, starting first with the change  
12 purse. That's State's Exhibit 115.

13 A Yes, sir.

14 Q How many genetic markers were you able  
15 to identify in your analysis of that exhibit?

16 A This is going to take a little time,  
17 going down through these, from the items per se.

18 Q How about this: Only on what's been  
19 marked for identification purposes, as State's Exhibit  
20 134?

21 A Okay. These are my item numbers from  
22 the case, correct?

23 Q Yes.

24 A Okay.

1120

Zain - Direct

1 Q You identified it on the change purse;  
2 is that correct?

3 A Right.

4 Q Item No. 15, the change purse from the  
5 dresser -- I identified seven blood characteristics from  
6 the blood staining I showed you. The blood staining  
7 identified on there eliminated ninety-nine percent of the  
8 population.

9 Q Is that what is meant by one person in  
10 a thousand?

11 A It's ninety-nine point nine percent of  
12 the population, so say, one in a thousand people could  
13 have a combination of blood types that are identified  
14 here.

15 Q Does John Moss have that combination?

16 A Yes, sir, he does.

17 Q I hand you now what has been marked for  
18 identification purposes as State's Exhibit 136. I  
19 believe that represents the stain that you took from the  
20 utensil drawer?

21 A Yes, sir. There, again, the same seven  
22 blood characteristics were identified. And I want to  
23 point out from the door, there was a smear of a blood  
24 stain; there wasn't a whole lot. And we utilized -- I



1121

Zain - Direct

1 tested to get the information that I could readily obtain  
2 from the stain without destroying it.

3 These seven blood characteristics were identified  
4 as the same ones as before that had occurred, and it  
5 eliminated ninety-nine point nine percent of the general  
6 population.

7 Q And John Moss has those same blood  
8 characteristics?

9 A Yes, sir, that's correct.

10 Q Now, I hand you what has been marked  
11 for identification purposes as State's Exhibit 138, and  
12 ask you what that corresponds to?

13 A The same blood characteristics, again,  
14 were identified, which eliminated ninety-nine point nine  
15 percent of the population.

16 Item No. 14 is what I designated as between the  
17 front bedroom, or master bedroom as I've been calling it,  
18 and the front door, that was the entrance to the home,  
19 into the bedroom. But it did also have the same blood  
20 type as John Moss.

21 Q You removed that blood stain sample  
22 from that door?

23 A Yes.

24 Q Now, I hand you what has been marked

1122

Zain - Direct

1 for identification purposes as State's Exhibit 139.

2 A 139 also, as Item No. 12 in my report,  
3 is the pillowcase from the bedroom beside the bath. It  
4 has the same blood typings as Mr. Moss. It occurs in one  
5 person in a thousand. That eliminates ninety-nine point  
6 nine percent of the blood typings, as report earlier.

7 Q Although you don't have a chart for it,  
8 I believe you also found blood on the flashlight?

9 A Correct.

10 Q Is that State's 106?

11 A Right. The blood typings and smears  
12 that were on the flashlight were identified as being the  
13 same blood type as on these previous items, and it occurs  
14 in approximately the same percentage, ninety-nine point  
15 nine, and due to the amount of the sample that was  
16 present on the particular item.

17 Q Now, I hand you what has been marked  
18 for identification purposes as State's Exhibit 137.

19 A I mentioned earlier about the curtain  
20 from the back door. You all have seen it. I have showed  
21 you where the blood staining was present on the curtain.  
22 You can see that there was a fairly large amount of blood  
23 staining present at the time that it was removed from the  
24 crime scene, and it was readily available to see the

1123

Zain - Direct

1 amount of staining still present on it.

2 I was able to obtain nine blood characteristics.  
3 The combination of these blood types occurs probably in  
4 about three people in ten thousand, who would have the  
5 same combination of blood characteristics as that which  
6 are identified. These are the same blood typings that  
7 Mr. Moss has.

8 Q That's three in ten thousand people?

9 A Yes.

10 Q What percentage of the population does  
11 that exclude?

12 A Because of the gene frequency in  
13 occurrence, it eliminates ninety-nine point ninety-nine  
14 -- seven percent of the population.

15 Q Ninety-nine point ninety-seven percent  
16 of the population?

17 A That's correct.

18 Q I will now hand you what has been  
19 marked as State's Exhibit 135.

20 A This is also -- we had a large amount  
21 of stain, which I have shown you. We've talked about it  
22 previously -- the Christmas package.

23 Also, the same number and types of  
24 characteristics were identified, as I just stated, from

Zain - Direct

1124

1 the curtain. The same package -- percentage and the same  
2 blood typings as Mr. Moss, and that occurred -- ninety-  
3 nine point ninety-seven percent had been eliminated as  
4 being possible contributors of the blood.

5 Q And that's the bowl box exhibit that  
6 you identified?

7 A That's correct.

8 Q And State's Exhibit 140 ---

9 A The wrapping paper which I showed you  
10 earlier -- there is still some blood staining present on  
11 the paper. It's the same blood characteristics which  
12 have been identified, the same ones as Mr. Moss's, which  
13 occur in the same percentage, and eliminated ninety-nine  
14 point ninety-seven percent of the general population.

15 Q Now, I hand you what has been marked as  
16 State's Exhibit 141.

17 A Okay. On the clothing of Bernadette,  
18 the daughter, you've got nine blood characteristics  
19 identified, the same blood typings as Mr. Moss's, and it  
20 eliminated ninety-nine point ninety-seven percent of the  
21 population, the same blood typing we previously talked  
22 about.

23 Q Does that chart represent what you  
24 found on Exhibit 189?

Zain - Direct

1125

1 A Yes, sir, that's correct.

2 MR. REVERCOMB: May I have a moment, your Honor?

3 THE COURT: Yes.

4

5 (Back on the Record)

6

7 MR. REVERCOMB: I believe that's all I have.

8

9

CROSS-EXAMINATION

10

11 BY MR. HUFFMAN:

12

13 Q Mr. Zain, I think you've already  
14 testified on direct examination as to why you use the  
15 term consistent with; is that correct?

16 A Yes, sir. I believe so.

17 Q That's because, based on this type of  
18 testing which was done in 1979, you were unable to  
19 specifically say that this specific sample which you  
20 reviewed came from a particular person; is that correct?

21 A Yes, sir, it is.

22 Q And I think that you've already  
23 indicated that these tests were actually tests of  
24 exclusion; that's what they are generally referred to.

1126

Zain - Cross

1 Is that correct?

2 A Yes, sir.

3 Q Now, the statistics that you used here  
4 for purposes of your analysis, three in ten thousand, one  
5 in one thousand -- where did those come from?

6 A First of all, they are not statistics.  
7 They are gene frequencies.

8 Q Oh, okay. Where did they come from?

9 A Gene frequencies are what can be  
10 genetically inherited in a given population. The  
11 population statistics, that you are calling statistics,  
12 are gene frequencies that are used here, are what is  
13 being used in a cross-section of national gene  
14 frequencies at this time and place.

15 Q Who compiled those statistics, or the  
16 gene frequency numbers, which you used?

17 A The primary information was done  
18 through the FBI facilities, the major crime laboratory,  
19 in the United States.

20 Also, there was work done by Dr. George  
21 Sensabaugh at the University of California in Berkeley.  
22 And also there were anthropological studies done on a  
23 wide variety of populations, which are available, as well  
24 as the major gene frequencies which were used at the time

1127

Zain - Cross

1 of this report, was from the -- is from Scotland Yard.

2 The Metropolitan Police Department of Scotland  
3 Yard, which is pretty much a closed pattern of what types  
4 of population we have in West Virginia.

5 Q Are you familiar with the West Virginia  
6 Blue Book?

7 A Yes, sir.

8 Q In fact, I think your name is in here;  
9 isn't it?

10 A Probably in a couple of them.

11 Q Let me let you take a look at the Blue  
12 Book that I've got and we'll note -- we'll let you tell  
13 us for the record what that represents.

14 A This was issued in 1979, probably for  
15 1978.

16 Q I've got a couple of tabs marked there  
17 beside -- the first one, you don't need to worry about,  
18 but if you will turn to this tab right there  
19 (Indicating).

20 MR. REVERCOMB: Your Honor, may we see that book  
21 before he shows it?

22 THE COURT: All right.

23  
24 WHEREUPON, Mr. Revercomb was shown the reference.



1128

Zain - Cross

BY MR. HUFFMAN:

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Q Let me hand you this Blue Book back, Mr. Zain. Where I've got the tab marked, I believe, has information in there about Kanawha County; is that correct?

A Yes, sir, that's correct.

Q Does it show there on the page, close to where my tab is, what the population was reported to be in Kanawha County at that time?

A Yes, sir, it's got population, 1970, 229195.

Q All right. Let me turn to the other tab and you tell me what county this is for? Can you tell where I've got the tab there?

A Let's see. Are you referring to Putnam County?

Q Putnam. What's the population shown in the Blue Book for Putnam County that year?

A Population, time period 1970, twenty-seven thousand six hundred twenty-five.

Q Okay. Now, if you were to take the three in ten thousand figure that is on the report here and were to figure that into utilizing the population in

1129

Zain - Cross

1 Kanawha County, according to the Blue Book, do you know  
2 what figure that would give us, based on a population in  
3 Kanawha County as reported, in terms of the number of  
4 people that you expect to see who would fall into this  
5 category?

6 A I think the map would probably call for  
7 what -- three hundred thousand. I mean, I want you to  
8 use which ever ---

9 Q Let me tell you what I came up with and  
10 you tell me if that sounds right.

11 A Okay.

12 Q I think this is right, because I did it  
13 on my calculator. Based upon a population in Kanawha  
14 County of two hundred twenty-nine five-oh-five, I came  
15 up with a figure for the three in ten thousand formula  
16 of three six five; is that right?

17 A Yes.

18 Q So, if, then, we were to assume that  
19 these characteristics would occur in three in ten  
20 thousand people, could we then assume that there were  
21 approximately sixty-eight point eight-five people in  
22 Kanawha County who had these genetic markers for any  
23 particular period; would that be right?

24 A As far as possible, or probable,

Zain - Cross

1130

1 individuals that could have the same blood typings, that  
2 is correct.

3 Q : And on the one and one thousand  
4 figures, if we were to do that same type of calculation,  
5 and again my calculator tells me, assuming it's correct,  
6 that the number for Kanawha County, again, based on the  
7 same population, would be six hundred ninety-four point  
8 two-four. Does that sound about right?

9 A That sounds correct.

10 Q So, we're talking about six hundred and  
11 ninety-four point two-four people that would apply to?

12 A Correct; who could possibly have the  
13 combination of blood types.

14 Q Would you come down for a minute. I  
15 want to ask you some questions about the crime scene  
16 here.

17 Item 1, which Mr. Revercomb asked you about, is  
18 the change purse. Where on there, on the change purse,  
19 does it appear?

20 A Which item?

21 Q Item No. 1, the change purse.

22 A That's the piece of a knife, right  
23 here.

24 Q No, I'm sorry. I'm going through the

1131

Zain - Cross

1 last list of things that Mr. Revercomb gave you, not  
2 specifically the item.

3 Let me ask about the specific item, or this  
4 change purse.

5 A The change purse was my numbered item  
6 15. It was found on the dresser.

7 Q And that's the one in one thousand.  
8 Let's point out a mistake my calculator made. Let's  
9 start again.

10 One in one thousand would not be six hundred  
11 ninety-four people, but would be two hundred twenty-nine  
12 people; is that correct?

13 A It's your calculator. You've got to  
14 remember, I was agreeing with your calculator.

15 Q I'm going to agree with her  
16 calculations; two-hundred-and-twenty-nine.

17 The change purse has characteristics which would  
18 put it in the one in one thousand category; is that  
19 correct?

20 A Yes, sir, that's the item on the  
21 dresser.

22 Q So, we're talking about two hundred and  
23 twenty-nine people; is that correct?

24 A Yes, sir.

1132

Zain - Cross

1 Q Would you stick that on there where the  
2 change purse was?

3 A All right.

4 Q The next item was the utensil drawer.  
5 Would you show us where that is?

6 A That's the drawer in the kitchen, which  
7 would be right here (Indicating).

8 Q That's also in the one in one thousand  
9 category; is that correct?

10 A Yes.

11 Q So, I'll give you a two-twenty-nine to  
12 put on there.

13 The next item is the door between the master  
14 bedroom and the living room. Would you show the jury  
15 where that is?

16 A This is Item No. 14.

17 Q I've got it marked also as the one in  
18 one thousand category; is that correct?

19 A Yes, sir.

20 Q Let me give you a sticker for that.

21 Okay. The next item I have is a pillowcase from  
22 the front bedroom -- I'm sorry, it would have been the  
23 other pillow case.

24 And that item also was in the one in one thousand

1133

Zain - Cross

1 category; is that correct?

2 A I believe so.

3 Q Let me give you a sticker for that one.

4 Now, the next item I have is the flashlight which  
5 was in the chair, I believe, in the TV room; is that  
6 correct?

7 A Yes, sir.

8 Q That was also in the one in one  
9 thousand category, which was two hundred twenty-nine  
10 people; is that correct?

11 A Right.

12 Q And now the next item which was removed  
13 from the back door -- since my figure was sixty-eight  
14 point eight-five, I could round off to sixty-nine, but  
15 I'll say sixty-eight. That item was in the three in ten  
16 thousand category; right?

17 A Yes.

18 Q Now, the Christmas package and wrapping  
19 paper was put in the same area; is that correct?

20 A Yes.

21 Q And the paper appears to be paper that  
22 came from that same package, which was also tested; is  
23 that correct?

24 A That's correct.

1134

Zain - Cross

1 Q And that's also in the three in ten  
2 thousand category, which would give us sixty-eight  
3 people; is that correct?

4 A That's correct.

5 Q And the final item that was tested was  
6 clothing of Bernadette, and it's also in the three in ten  
7 thousand category. Where was it located?

8 A The bedroom of the daughter.

9 Q And that would be sixty-eight; is that  
10 correct?

11 A Correct.

12 Q Where -- let me ask you this. There is  
13 a pool of blood located in the front bedroom by the bed;  
14 is that correct?

15 A It's number 3 on my crime report.

16 Q That blood was consistent with the  
17 blood of Vanessa Reggett?

18 A That's right.

19 Q As was the blood that was found on the  
20 bedspread there in that bedroom; is that correct?

21 A Yes.

22 Q Right on the corner, there; wasn't it?

23 A Yes, it's designated as number 4 on the  
24 report.



Zain - Cross

1135

1 Q And the blood -- was it consistent with  
2 Vanessa's blood which was also found on the pillow case;  
3 is that correct?

4 A Yes, sir, that's correct. The blood  
5 stain was found on the pillow, to the right of the child.

6 Q You may take your seat again.

7 MR. HUFFMAN: I don't have any further questions.

8

9 REDIRECT EXAMINATION

10

11 BY MR. REVERCOMB:

12

13 Q Mr. Zain, Mr. Huffman asked you about  
14 a number of items that were removed from the scene there  
15 and were submitted to you later as being -- they fell in  
16 the one in ten thousand or the three in ten thousand  
17 group. Are all of those blood samples taken from those  
18 various items, are they all consistent with each other?

19 A Yes, sir.

20 Q They could all have originated from the  
21 same person?

22 A It's very likely that they did; yes  
23 sir.

24 Q What percentage -- three in ten

1136

Zain - Redirect

1 thousand people have the blood characteristics of the  
2 defendant, John Moss -- what percentage of that would be

3 ---

4 A The normal populations which are taken  
5 into consideration -- gene pools are usually fifty-two  
6 to fifty-four percent of the population in female, and  
7 forty-eight -- forty-six to forty-eight in males,  
8 normally.

9 Q So, assuming a man committed this  
10 crime, it would cut these numbers in half?

11 A It could. But, depending on a given  
12 population, in a general sense, yes.

13 Q And once again, the blood  
14 characteristics of John Moss and the blood  
15 characteristics found on several of these items, the  
16 little girl's pajama top, the curtain on the back door,  
17 and the Christmas wrapping paper would exclude ninety-  
18 nine point nine percent of the population?

19 A So far as being the possible  
20 contributors that would have that combination of blood  
21 types, yes.

22 Q They don't exclude the defendant; do  
23 they?

24 A That's correct.

1137

Zain - Redirect

MR. REVERCOMB: That's all I have.

RE CROSS-EXAMINATION

BY MR. HUFFMAN:

Q I've got one question, Mr. Zain. The blood you tested from the scene, you can't determine from those tests whether it came from a man or a woman; can you? Based on the sample that you used, you can't tell -- based on what you saw?

A At the time and place at that analysis time, it was unavailable to me. It can be done, is why I'm hesitating. But it was not available to be done at the time.

Q And DNA testing is what you do now; is that correct?

A Yes, sir.

Q And in this particular case, the DNA testing that was done most recently by you was inconclusive; is that correct?

A Yes, sir.

MR. HUFFMAN: No further questions.

1138

Zain - Re-redirect

RE-REDIRECT EXAMINATION

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3

BY MR. REVERCOMB:

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5

Q

DNA testing wasn't available in 1979;

6

was it?

7

A

That's correct.

8

MR. REVERCOMB: No further questions.

9

10

THE COURT: Folks, we're going to recess until

11

1:30.

12

13

WHEREUPON, the jury was excused for the noon

14

recess.

15

16

THE COURT: Steve, do you have anything else?

17

18

MR. REVERCOMB: We need to move these into

19

evidence. We need to talk about the possibility of maybe

20

THE COURT: Okay.

21

Do you all have some witnesses?

22

23

MR. BICKLEY: We have two, that I've seen, your

24

Honor. We have two others that I've not seen, but they

were to be here at 1:00 o'clock, anyway.

1139

1 THE COURT: Okay.

2 Mr. Zain, thank you. You may step down.

3

4 WHEREUPON, the Court stood in a recess in the  
5 hearing of this case.

6

7 (Back on the Record after Noon Recess)

8

9 THE COURT: Sally, tell the jury that we're going  
10 to deal with exhibits, and it will be about ten more  
11 minutes.

12 Okay. You want to do some house cleaning now, I  
13 take it?

14 MS. LUSK: Yes. The first matter is -- we would  
15 simply ask the Court to poll the jury this morning and  
16 ask if they have seen that crazy question that Channel  
17 13 reporter had asked him out at the scene, when she put  
18 a microphone up to his face. We had forgotten to do  
19 that. If it's not too late, I would still like to know  
20 if any of the jury members saw that.

21 THE COURT: Why don't we bring them in and just  
22 ask it?

23 MS. LUSK: I would like to ask them one-by-one,  
24 if that would be okay with the Court.

1321

CLOSING ARGUMENTS

(For the State)

BY MR. REVERCOMB:

MR. REVERCOMB: May it please the Court.

Good morning, ladies and gentlemen. At this time, I would like to take the time to thank you all on behalf of everyone. You have paid close attention this past week, this past seven days, and sometimes it has been hard to stay awake. It has been hot in here, and there has been some tedious evidence. But I've watched you. It is obvious that you have paid close attention to all of the evidence, and I am sure that I speak on behalf of everyone in thanking you.

I've also noticed that you have taken this case very seriously, as it is. Your duty is important. Ms. Lusk and I, we take our jobs very seriously, as do Mr. Bickley, Mr. Huffman, and Ms. Beckett.

At this time, I would submit to you that the State has met its burden of proof. We have proved the defendant, John Moss, guilty beyond a reasonable doubt of the first degree murder of Bernadette Reggettz,

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1 Vanessa Reggettz, and Paul Eric Reggettz. I say that  
2 because we have proven each and every element of felony  
3 murder, beyond a reasonable doubt.

4 We proved that the defendant entered -- broke and  
5 entered the Reggettz home on December 13, 1979, in the  
6 early morning hours, with the intent to commit a larceny  
7 therein. His confession says that, "I went in there to  
8 steal," and he did steal. He took some flatware, the  
9 camera -- and in the course of doing that, in committing  
10 that felony burglary, he murdered three people, ladies  
11 and gentlemen. He murdered a little girl, a seven year  
12 old boy, and their mother.

13 The defense in this case has been Paul Reggettz's  
14 confession. I want to stress that fact. Mr. Reggettz -  
15 - you saw him on the stand. He told you -- and the  
16 evidence shows -- that he was at the State Police  
17 Detachment for fourteen and a half hours. That's that  
18 day, on December 13, 1979, before he confessed. He had  
19 had four to six hours' sleep in the past two days. He  
20 had worked the night shift at UPS. He had gone to  
21 Company B down there with Trooper -- Sergeant Woodyard,  
22 to try to help them solve this crime. That day, he came  
23 home and found that his family had been murdered.

24 You heard from Scott Leasure, the man who worked



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1 at the A&W. What did he tell you about Paul Reggett?  
2 He told you that he came in there and that it was obvious  
3 that something dramatic had happened to him. He was  
4 shook up, he didn't know what he was doing, he didn't  
5 even know how to ask for anything. He didn't know what  
6 to do. So, what did he do? That day, he was shook up.  
7 He threw a dollar down on the counter and says, "Call the  
8 Police. Someone has killed my wife." And then he ran  
9 back toward the house to see if there was anything else  
10 he could do to help the situation.

11 Then, when Trooper Williams arrived, Trooper  
12 Williams represented help. He wanted help. Trooper  
13 Williams was there to give it to him. He said he told  
14 Trooper Williams what he had found. Paul doesn't even  
15 remember going back into the house that day. He doesn't  
16 remember that.

17 You heard what Trooper Williams told you, that he  
18 went back into the house twice, and Paul told him exactly  
19 what he had found. Paul doesn't remember that. Trooper  
20 Williams said he didn't show much emotion or no emotion,  
21 that he had a blank look. Paul told you that something  
22 inside of him died. You heard him say it. He said,  
23 "I've got to tell this Trooper what I found."

24 You heard from Chuck Pettry Friday. What did he

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1 say about Paul Reggettz when he saw him at Company B that  
2 afternoon? He said he was distraught, upset.

3 Paul Reggettz told you that later on that evening  
4 he realized that the Troopers, Dr. Sopher, and Law  
5 Enforcement -- he realized that they suspected him of  
6 doing it, and he just couldn't understand that. He  
7 couldn't believe it. He told you how they fired  
8 questions at him; one person asking a question and before  
9 he got it answered, somebody else would ask him a  
10 question. That went on for hours. The same questions  
11 over and over again.

12 Sergeant Woodyard testified yesterday that that  
13 could be true. There were times when there were three  
14 or four people asking him questions at the same time, for  
15 fourteen and a half hours.

16 You heard what Paul said about Dr. Sopher. He  
17 said he was insinuating things -- "You did this, you did  
18 it like that, didn't you?"

19 Dr. Sopher admitted that he made him take his  
20 clothes off and he didn't find any cuts on Paul Reggettz.  
21 He checked Paul Reggettz's boots for blood, for blood  
22 splatters. I think I remember Trooper Williams testified  
23 that there was no blood on any of Paul Reggettz's clothes  
24 or boots.

1325

1           The final straw came at 2:30 a.m. Two men came  
2 downstairs. He didn't know who they were. They said,  
3 "Let us have him. We'll take care of him." A couple of  
4 minutes later, another man came and said, "They want  
5 blood. I don't want any part of this." He said that at  
6 that point, that was it -- "I had to tell them something  
7 to make them quit asking me questions and leave me  
8 alone." Paul said, "I'll tell you what you want, if you  
9 don't let them hurt me."

10           You heard Sergeant Woodyard yesterday. He said  
11 that Paul Reggett said that to him. He admitted that,  
12 that he had said, "If I tell you what you want, will you  
13 make them leave me alone?" Sergeant Woodyard said he  
14 didn't know who he meant, but he was afraid of something.

15           Paul was also tired. He wanted the questioning  
16 to stop. Paul's confession, his first confession, was  
17 simply, "Okay, I killed my wife and kids." Later on, he  
18 went on into detail.

19           You heard Sergeant Woodyard yesterday in cross-  
20 examination. His every response to the question, "What  
21 did you kill your wife over?" His answer was, "We got  
22 into a pushing match over the kids playing." When he  
23 said, "Don't, daddy," every response he gave was to a  
24 specific question.

1326

1 Now, one thing he couldn't have fabricated,  
2 ladies and gentlemen, he had seen it. He had seen  
3 everything. He came home and found his little girl  
4 hanging on the door; he found his wife tied to another  
5 door; he found his little boy in the tub. When he said  
6 he put his little girl on the door because she liked to  
7 swing, this was in response to a question. When he said  
8 he put his little boy in the tub, that was a response to  
9 a direct question.

10 Paul told you that he just couldn't take it. He  
11 wanted to be left alone. He was scared. Consider this:  
12 Where did Paul have to go? Who did he have to go home  
13 to? No one.

14 We know that Paul Reggett's confession is not  
15 true. How do we know that? We know that from the  
16 evidence. The blood found on the Christmas presents and  
17 wrapping paper is not Paul Reggett's blood. Remember  
18 what Trooper Zain said yesterday? He said one  
19 inconsistent marker excludes people one hundred percent.  
20 The blood found at the scene wasn't Vanessa's. It was  
21 consistent with the defendant's. It can be Paul's. A  
22 hundred percent.

23 Paul's confession, or the so-called confession,  
24 he never mentioned any Christmas gifts. I doubt if he

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1 knew it. After all, his little girl was hanging on the  
2 door there.

3 Whose confession is it consistent with? That man  
4 right there (Indicating). Whose blood is it consistent  
5 with? John Moss's.

6 John Moss told you about opening those gifts --  
7 not Paul. The blood found on the curtain at the back  
8 door was not Paul Reggett's blood. Again, he is  
9 excluded a hundred percent. Vanessa Reggett's blood is  
10 on the outside of that door, you could see that in  
11 Exhibit 5. The curtains were partially torn down on that  
12 back door. Whose confession is that consistent with?  
13 Whose blood is it consistent with on that curtain? John  
14 Moss's.

15 Paul Reggett -- in his confession, there was  
16 never a struggle at the back door. They weren't even in  
17 the kitchen.

18 Alex and Paul Fortson both testified that you had  
19 to lift that back door to shut it, that it didn't fit the  
20 door frame very well. Whose confession is that  
21 consistent with, ladies and gentlemen? Who said he saw  
22 Vanessa at the back door "after he ran out of the house,  
23 trying, in his words, "to put" something against it, a  
24 chair or something"? What she was trying to do was to

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1 lift that door and shut it.

2 The blood found on little Bernadette's pajama top  
3 -- blood on the side where she was man-handled when the  
4 cord was wrapped around her neck. Blood here  
5 (Indicating), when she was picked up and hung on that  
6 door. Whose blood is that? It's not Paul Reggett's.  
7 It's consistent with that man right there (Indicating).  
8 It's consistent with his confession.

9 Paul Reggett -- according to Sergeant Woodyard,  
10 it was never explained to him how he hung that little  
11 girl on the door. Why? Because he didn't do it.

12 The fact that the defendant's blood, or  
13 consistent with his blood, on that shirt, shows two  
14 things. First of all, it excludes ninety-nine point nine  
15 percent of the population -- ninety-nine point nine-seven  
16 percent. That's nine hundred and ninety-seven --  
17 actually, it's nine thousand nine hundred ninety-seven  
18 people out of ten thousand, excuse me. But it does more  
19 than that. Paul Reggett is excluded a hundred percent  
20 as the depositor of that blood. It shows that he didn't  
21 hand his girl on that door.

22 The defense would have you believe that Paul  
23 Reggett cut his family, then went out and got someone  
24 else's blood and sprinkled it around the scene. Is that

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1 reasonable?

2 They would further have you believe that it  
3 happened to be another person's blood they got. It just  
4 happened to be that man's right there (Indicating). Is  
5 that believable? That's absurd. Paul Reggettz just  
6 happened to find some blood that excluded ninety-nine  
7 point nine-seven percent of the population? That's just  
8 not reasonable.

9 Paul's confession -- his so-called confession --  
10 is just not true, ladies and gentlemen. Little  
11 Bernadette's body tells us that. The livor mortis is the  
12 color of death. You heard Dr. Sopher's testimony. She  
13 had livor mortis in her feet, consistent with being hung,  
14 suspended completely. That's in John Moss's confession,  
15 and Paul Reggettz saw that when he took her down. What  
16 did Dr. Sopher say about it? He said it wasn't intense  
17 enough for her to have hung for twelve hours, but it was  
18 too intense for her to have hung for two hours. What  
19 that does -- that excludes both of Paul Reggettz's  
20 confessions, when he first told Sergeant Woodyard that  
21 he took the little girl down before he had gone off to  
22 work. We know that's not true, from the color of death.  
23 She had not hung on that door for twelve hours.

24 Later, at the scene, he said he took a nap before



1330

1 he went to work. We know that's not true either, because  
2 when they found her lying on the bed, she had not been  
3 lying on that bed for twelve hours. The livor mortis  
4 would have been in the back of her legs, her back, her  
5 torso. There wouldn't be the mottled effect on the front  
6 of her legs, which is consistent with the color all  
7 around her legs. So, she didn't hang for twelve hours  
8 and she didn't lie for twelve hours. So, whose  
9 confession is that consistent with?

10 Finally, we've got to use logic and common sense.  
11 What effect did Paul Reggett's confession have on John  
12 Moss? None whatsoever.

13 Paul Reggett's confession, and any evidence  
14 against John Moss, is completely separate and  
15 independent.

16 How does the Reggett confession change the  
17 evidence, the blood evidence? How does that change the  
18 evidence against John Moss? How does it change John  
19 Moss's confession? How does it change the other  
20 evidence, the flatware that he took, the glove prints?  
21 It doesn't change any of the tangible evidence. You can  
22 leave Paul Reggett's confession in or you can take it  
23 out; it doesn't affect the evidence against this man.

24 You saw Paul Reggett on the stand. He told you

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1 that -- he admitted things that he didn't have to about  
2 the initial relief that was placed on him. He was just  
3 being honest, ladies and gentlemen. He admitted things  
4 that would hurt him, and he didn't remember things that  
5 would help him. He said, "Oh, yeah, I remember going  
6 back in with Trooper Williams," but he didn't remember  
7 those things before.

8 I want you to ask defense counsel -- again, ask  
9 them to explain how Paul Reggetz's confession changes  
10 any of the evidence against John Moss. See if they can  
11 explain it.

12 Some other facts -- Paul didn't know that the  
13 camera was missing or the flatware. He had never had a  
14 chance to do an inventory. He knew the guns were  
15 missing. And speaking of guns, he explanation was, he  
16 took those guns and threw them away because he didn't  
17 want the Police to think that he was dangerous. Well,  
18 that's absurd too. I mean, he's got three bodies right  
19 there. Someone obviously dangerous had been there. And  
20 he gave the explanation that he left because he was  
21 upset. That didn't make sense either. It's not  
22 reasonable, it's not consistent. The rifle wasn't where  
23 he said he threw it. He couldn't tell them anything  
24 about the pistol.

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1           This man (Indicating) told about the pistol,  
2       didn't he? He told them it was broken and it wasn't any  
3       good, so he put it in a bag and dumped it in the St.  
4       Albans High School trash. Did the Police make that up?  
5       Did he make that confession up? Is that reasonable? Did  
6       they put that fact in there that he threw it away at the  
7       high school?

8           John Moss told them about the rifle, too. He  
9       said that he took it. And Chuck Pettry, on October 29,  
10      1980 -- you heard the defendant on the stand tell his  
11      mother where to look for that rifle. If she didn't find  
12      it, then ask Carlton.

13           Is that reason to believe that Paul Reggett  
14      stopped in the middle of a quarrel with his wife?  
15      Incidentally, if the quarrel was over her attempts to  
16      discipline the kids, then would he kill the three of  
17      them? Does that make sense? Is it reasonable to believe  
18      that he stopped in the middle of that quarrel to kill  
19      them?

20           And once again, on the wrapping paper, on State's  
21      Exhibit 114, two pieces of wrapping paper with blood on  
22      them. There was a glove print on one of them. You can  
23      see it clearly in the blood. That blood could not be  
24      Paul Reggett's blood.

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1           Again, I think I've already mentioned, there is  
2 no blood mentioned on any of the clothing submitted by  
3 Paul Reggett. Plus, he had no blood or cuts, according  
4 to Dr. Sopher. There was no rifle, according to Sergeant  
5 Custer. There was no prints, from Mr. Shumate. There  
6 was no blood on his clothes, according to Trooper Zain.  
7 There was no bruising found on little Paul Eric's  
8 buttocks, which the father said he did.

9           Paul Reggett's confession is not true. He  
10 didn't kill that family.

11           Now, we come to John Moss and the evidence  
12 against him. His confession, ladies and gentlemen, you  
13 will have to chance to play this tape over back there.  
14 All you do is hit this play button, and listen to his  
15 taped confession, and listen to his voice. Listen to the  
16 tape.

17           In his confession, he is corroborated by what --  
18 by the blood. And once again, John Moss said this  
19 several times. You can consider this evidence. And lots  
20 of times you can consider it together. It's not just his  
21 blood. It's his confession, his blood, and everything  
22 else.

23           His confession, in the first place, is  
24 corroborated by his blood. You've got it on the

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1 Christmas paper, the wrapping paper, the utensil drawer,  
2 the curtain in the back, on the back door in the kitchen,  
3 the change purse on top of the chest of drawers, the  
4 rifle is gone, the door that little Bernadette was hanged  
5 on, the pillow case in the back bedroom, the flashlight  
6 in the TV room, used to help him search the house in the  
7 dark, and the little pajama top of Bernadette -- blood  
8 consistent with his blood found in every room in that  
9 house except the bathroom. Blood was found on those  
10 items in that house consistent with his, which excludes  
11 ninety-nine point nine-seven percent of the population.  
12 It excludes Paul Reggett and every member of his family  
13 and it excludes nine thousand nine hundred ninety-seven  
14 out of every ten thousand people.

15 The burden of proof, ladies and gentlemen, is  
16 beyond a reasonable doubt, not beyond all doubt or all  
17 possible doubt. It is beyond a reasonable. Evidence  
18 against the defendant is overwhelming. The blood alone  
19 excludes ninety-nine point nine-seven percent of the  
20 population.

21 The population of St. Albans -- Mr. Huffman made  
22 a big deal about Putnam County or Kanawha County. The  
23 population of St. Albans is ten thousand to twelve  
24 thousand people. How many of those people were excluded

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1 statistically?

2 There is more than that, ladies and gentlemen.  
3 And I ask you to consider it all, not just the blood, not  
4 just the confession, not just the glove prints.

5 What did they find? They found the scissors in  
6 Vanessa Reggett's chest; they found the knife handle;  
7 they found blood on the handkerchief box and the door  
8 that Vanessa was tied to; on the wrapping paper and the  
9 flatware box. And then John testified that he gave it  
10 to another lady.

11 Moss's confession that he didn't remember whether  
12 he wore gloves or not -- I would say he did. He was in  
13 a frenzy, ladies and gentlemen. His blood was rushing.  
14 That's what he told you.

15 Exhibit 114, ladies and gentlemen, I submit to  
16 you, is his signature, right there (Indicating). This  
17 blood that is consistent with his. That bloody glove  
18 print is consistent in shape and size to the glove print  
19 found on the scissors shoved in Vanessa Reggett's chest.  
20 Look at these exhibits. They are not pleasant, but they  
21 are important to look at. That's not Paul Reggett's  
22 blood, it is John Moss's blood. It corroborates his  
23 confession -- Moss's confession.

24 After murdering three people, the little girl,

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1 the little boy, and their mother, he went to their  
2 Christmas gifts under the Christmas tree, opening their  
3 gifts, just looking -- those were his words. Listen to  
4 the tape. Just looking, with the little girl hanging  
5 behind him on the door.

6 Again, this glove print here is consistent with  
7 the one found on the scissors. In his confession, he  
8 says he stabbed her with a knife or something. He  
9 doesn't know if it was a knife or what. And again, you  
10 have got to consider all of the evidence.

11 So far, we have the blood; the glove prints; the  
12 wrapping paper; and the scissors. What else? This man,  
13 in his confession, said that Vanessa Reggettz cut him  
14 when he came back in that door after leaving. We'll get  
15 to that.

16 He said she cut him with a knife on his hand.  
17 What did he say? He says, "I took the knife away from  
18 her and threw it down." The glove print consistent with  
19 the one on the scissors and the one on that wrapping  
20 paper -- even his blood was found on this knife.  
21 Evidently, he just threw it down.

22 Paul Reggettz never mentioned a knife, ladies and  
23 gentlemen.

24 The door to which Vanessa Reggettz was tied --

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1 the glove print with one impression on one side and two  
2 on the other, a thumb and two fingers. According to  
3 Lieutenant Shumate, what were those glove prints doing  
4 there? They were put there when John Moss tied Vanessa  
5 to that door.

6 The handkerchief box under the tree, you can see  
7 that exhibit, too. He was at the tree, just looking  
8 through the gifts. The flatware -- he gave the flatware  
9 box to Arbutus Johnson. I want you to look at that, too,  
10 the silverware. It had the same glove print on it. A  
11 thumb print, consistent with the shape and design of the  
12 one found on the blood on the scissors sticking into  
13 Vanessa's chest; and on the wrapping paper. The flatware  
14 that Arbutus Johnson has identified in this Courtroom,  
15 the flatware that Paul Reggettz identified in this  
16 Courtroom, Paul Reggettz -- that it came from under his  
17 Christmas tree.

18 Arbutus Johnson said that man gave it to her.  
19 She also said he has scratches on his face when he came  
20 gave it to her. Vanessa must have put up a fight.

21 John Moss's confession says, "dishes". I submit  
22 to you that he is confused, ladies and gentlemen, because  
23 he didn't know what this is (Indicating). He saw this  
24 gift under the tree when he opened it.



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1           We have the cameras. The first time the Police  
2           had ever heard about the cameras was October 28, 1980,  
3           when John Moss told them that he took the cameras home.  
4           The Police went to Cleveland and searched the house once.  
5           It wasn't there. They get a phone call -- John told his  
6           mom where to look for it -- "On a dresser in my bedroom."  
7           She looked and found it in his father's car. So, they  
8           went back that evening and got State's Exhibit 102 from  
9           Mr. Moss's father. That camera has been identified by  
10          Paul Reggett as being his, and we have entered  
11          photographs which were made with that camera.

12                 The defendant's father testified yesterday. Mr.  
13          Bickley asked him to pick up John Moss's camera. Which  
14          camera belonged to John? He picked up the State's  
15          Exhibit 117, not 102, not Paul Reggett's camera.

16                 The defense asked Mr. Fortson yesterday, some  
17          questions about how the house had been entered after he  
18          was brought into custody, insinuating that those cameras  
19          were stolen then. I don't know. But if that were true,  
20          why did John Moss tell the Police about it? Why did he  
21          confess to taking the camera? He told them that himself.  
22          Paul Reggett didn't even know the camera was missing.

23                 And again, this phone call, when John Moss talked  
24          to Mike Smith, two hundred fifty miles away in Cleveland.

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1 He talked to his mother and told his mother where to look  
2 for the camera, where it had been, on his dresser. The  
3 rifle was in the closet, or if it's not there, ask  
4 Carlton about it.

5 Chuck Pettry overheard the things he was saying.  
6 He told his mother he was okay. He told her where the  
7 camera and where the rifle were.

8 We've got the time of John Moss's confession.  
9 They asked, "Do you know what time it was, John?" and he  
10 said, "No, I don't. It must have been late, because it  
11 was almost daylight when I got home." Almost daylight  
12 when I got home.

13 State's Exhibit 127, ladies and gentlemen, is a  
14 clock radio. What time did it stop? When the cord was  
15 snapped -- 6:15. The rest of this cord was used to kill  
16 Paul Eric Reggett. It's consistent with John Moss's  
17 confession, corroborating his confession. The confession  
18 about the time -- that's the clock the Reggett family  
19 went by.

20 You heard Paul testify that Vanessa would wake  
21 him up for work. She would holler, "It's 1:00 o'clock,  
22 Paul, time to get up for work." The only other clock in  
23 the house, you heard testimony too, is a wind-up clock  
24 in the front bedroom. Paul says it wasn't used except

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1 on weekends when he wanted to get up early.

2 You can tell in this photo of the clock that it  
3 was taken some time in the afternoon, 1:00, 2:00, 3:00  
4 o'clock in the afternoon, by Lieutenant Fulks. This  
5 photo shows a clock with a reading of 9:30,  
6 approximately.

7 You've got to consider all of this evidence  
8 together, ladies and gentlemen, the blood; the glove  
9 prints; John Moss's confession; the clock; the time.  
10 John Moss's confession was live. You heard it on tape.  
11 The troopers didn't give him that information; they  
12 didn't feed it to him.

13 In his confession, he says he stabbed Vanessa  
14 Reggett with a knife or something. Later on, he says  
15 a knife or a fork. Ladies and gentlemen, if he had been  
16 told what to say, he would have gotten it right; he would  
17 have said scissors. They would have made sure that John  
18 Moss got that right. But he wasn't told what to say.

19 The camera -- the Police didn't know about that.  
20 If there were making up that confession, are they going  
21 to drive to Cleveland, go all of that way from  
22 Charleston? I don't believe so.

23 If the Troopers are making up John Moss's  
24 confession, what about the flatware, the silverware? If

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1 they were leading Moss and telling him what to say, they  
2 would have said, "Who put the little boy face-down in the  
3 tub?" Reggettz said, "I don't remember. I just put him  
4 in the tub." Remember, that's what he told you. Listen  
5 to the confession.

6 Vanessa and the children were in bed together.  
7 That's how they slept because Paul worked at night. In  
8 Moss's confession, there was no one else there. Paul  
9 wasn't there. Paul didn't ask him to do this. Do you  
10 think the Police want to admit that they were wrong about  
11 Paul Reggettz, that they made a mistake?

12 That piece of evidence about Paul's car -- John  
13 Moss knew they lived in the neighborhood. The Reggettz  
14 family had lived in his aunt and uncle's motel. He knew  
15 that they drove a little blue Honda. He knew that Paul  
16 Reggettz worked the night shift. It's in his confession.

17 When asked, "Was the blue Honda there?" he said,  
18 "Yeah." He knew that people would be in that house --  
19 Vanessa and the two children. Vanessa weighed eighty-  
20 seven pounds. If the Police were making this up, they  
21 wouldn't have thrown in loose ends about the car.

22 What did Mr. Fortson tell you about Paul's car  
23 that day when he got home? That it wasn't parked in its  
24 usual spot in front of the Fortson home; it was parked

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1 in the driveway by his house. Is that consistent with  
2 Paul Reggett's confession? His confession is consistent  
3 with his testimony that he was going to K-Mart and he had  
4 come to see about his wife and little girl. He told you  
5 that he was supposed to pick them up out on Route 60, but  
6 because it had been raining off and on he figured they  
7 were at the house. So, he pulled up to the house and  
8 left the engine running in the driveway. He went in to  
9 get his little girl and his wife and go to K-Mart, but  
10 that's not what happened.

11 In John Moss's confession, he says he went in the  
12 house initially, had a confrontation, struck Vanessa with  
13 the gun and knocked her down, then he went out of the  
14 house. He said he looked back and saw her at the door.  
15 He went back and forced his way back in. Is that  
16 reasonable to believe that the Troopers made up that?

17 You've got to consider this thing. Listen to  
18 that tape. You are going to be asked to decide whether  
19 or not to recommend mercy or not to recommend mercy for  
20 John Moss. I want you to listen to that tape -- how this  
21 man's own voice talks when he talks about what he did to  
22 those people -- when he knocked Vanessa down and tied her  
23 up with the cord and strangled her, put scissors in her  
24 chest, tied her to the door.

1343

1           And little Paul Eric -- he hog-tied him and put  
2           him in a tub, and then he tied the little girl to the  
3           door with a cord around her neck and strangled her, then  
4           hanged her on the door.

5           Listen to him tell it with his own voice and  
6           consider the horror they went through. The children  
7           watch this man kill their mommy -- the mother not knowing  
8           what's going to happen to her babies.

9           Look at the photographs, ladies and gentlemen.  
10          They are not pleasant, but they are real.

11          I submit to you that it is all or nothing in this  
12          case. If you believe beyond a reasonable doubt that the  
13          evidence is overwhelming that John Moss murdered the  
14          Reggett family, that he murdered little Bernadette, Paul  
15          Eric, and Vanessa -- there is no room for mercy. He  
16          should spend the rest of his life in the penitentiary.  
17          His father could visit him in the penitentiary. Paul  
18          Reggett will never have visitation day.

19          Consider what mercy John Moss showed the Reggett  
20          family. After the initial confrontation, he left the  
21          house. They were all alive, ladies and gentlemen. He  
22          went back in when he saw Vanessa at the door for one  
23          reason -- his blood was rushing and he went back in that  
24          house to kill them. And that's exactly what he did.

1344

1       What mercy did he show them? None.

2               I'm asking you to find that John Moss is guilty  
3       of first degree murder of Paul Eric Reggettz as set out  
4       in Count One, and show him no mercy. I'm asking you to  
5       find that he is guilty of the first degree murder of  
6       Bernadette Reggettz, in Count Two, no mercy. I'm going  
7       to ask you to find him guilty of the murder of Vanessa  
8       Reggettz -- no mercy. He should spend the rest of his  
9       life in the penitentiary for what he did.

10              Thank you.

11  
12              THE COURT: Mr. Huffman, I tell you what let's  
13       do, let's let this jury have about ten minutes.

14              MR. HUFFMAN: Fine.

15              THE COURT: Folks, we'll take a brief recess.

16  
17              WHEREUPON, the Court stood in a recess in the  
18       hearing of this case.

19  
20              (Back on the Record)

21  
22              THE COURT: Go right ahead Mr. Huffman.

23              MR. HUFFMAN: Thank you, your Honor.

24

1370

1 (Back on the Record)

2  
3 CLOSING ARGUMENT

4  
5 (For the State)

6  
7 BY MS. LUSK:

8  
9 Did you notice, ladies and gentlemen, that they  
10 didn't talk about the blood? Did you notice that there  
11 is no explanation for this blood that's consistent with  
12 John Moss's being in this house?

13 They are arguing out of both sides of their  
14 mouths. If you believe that Paul Reggettz committed this  
15 crime, then where did this blood come from that doesn't  
16 belong to any member of his family? Do you think  
17 somebody came into the house and burglarized the house  
18 after these people were already dead? That they went  
19 through the house, cut themselves shaving, and bled all  
20 over the house?

21 Where did the blood come from? These people were  
22 already dead. There is certainly no struggle that  
23 ensued. There is no one to struggle with, so where did  
24 the blood come from? The blood came from the murderer,



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1 and that was John Moss. The blood came from the person  
2 who struggled with Vanessa Reggettz at the back door.

3 We know that there was a struggle at the back  
4 door. There is blood on the back door. There is blood  
5 on the curtains. Vanessa's blood is on the outside of  
6 the back door where she tried to close the door. The  
7 curtain is partially torn down. The murderer's blood is  
8 on the utensil drawer over where the knives are, because  
9 there is a struggle.

10 The knife that was taken away from Vanessa  
11 Reggettz had a glove print on it. It's like Mr.  
12 Revercomb said, do you think Paul Reggettz took the time  
13 to put gloves on?

14 Every room in the house is consistent with John  
15 Moss. There is a flashlight in the family room that has  
16 got his blood on it. He used it to go through the house  
17 and look for stuff to steal. But he didn't need the  
18 flashlight, because all the lights in the house were on.

19 We know that there are two coffee cups in that  
20 family room, just like Paul Reggettz said. He sat up and  
21 watched TV with his wife.

22 There is the K-Mart ad, where he was going to go  
23 buy himself a Christmas present. Vanessa was going to  
24 buy it for him the next day.

1372

1           There is the struggle with Mrs. Reggettz. She is  
2 hit in the head with a gun. Dr. Sopher compared the gun  
3 with the wound on her head. The gun butt -- just like  
4 John Moss said. His blood was rushing. He snatched a  
5 cord. He didn't know where he got the cord from, he was  
6 frenzied. His blood was rushing. He took the cord and  
7 tied these victims up.

8           Mr. Huffman started talking to you about the time  
9 of death. I want to talk to you a little bit more about  
10 that. We know that there is a preliminary time of death  
11 range given by the Medical Examiner. We know that that  
12 preliminary time of death is given at about 2:00 o'clock  
13 in the afternoon, because it caused the State Police to  
14 read Paul Reggettz his rights.

15           Let's look at the objective factors. At 2:00  
16 o'clock in the afternoon, you have the preliminary time  
17 of death stated. Then we know that at 3:30, there is  
18 actually an on-the-scene check done by the Medical  
19 Examiner. He testified that at 3:30, he checked the  
20 rigor mortis of the victims and he took their  
21 temperatures. After looking at his findings, his  
22 objective findings, at 3:30 in the afternoon, first,  
23 rigor mortis of Vanessa was not yet fixed. It was marked  
24 in her neck and jaws, moderate in part, of her body, and

1373

1 mild in part of her body.

2 What did the Medical Examiner tell us about the  
3 rigor? It generally fixes in eight, ten, twelve hours.  
4 From the time he was checking it at 3:30 in the  
5 afternoon, what does that back you up to? 3:30 a.m. to  
6 7:30 a.m. Who is that consistent with? John Moss -- not  
7 Paul Reggettzt, he was at work.

8 The second rigor mortis check was of Paul Eric  
9 Reggettzt, with the same results. Rigor mortis is not  
10 fixed throughout his body. Back it up, eight, ten,  
11 twelve hours -- 3:30 a.m. to 7:30 a.m. -- John Moss.

12 The third victim -- look at that rigor mortis of  
13 Bernadette Reggettzt. The same results. Her rigor is not  
14 fixed either. 3:30 a.m. to 7:30 a.m. -- John Moss.

15 Look at the temperature of Vanessa Reggettzt.  
16 Now, we know that the body temperature of the children  
17 doesn't tell us a whole lot. There are no studies on  
18 that. Vanessa's temperature was eighty-two degrees. The  
19 Medical Examiner said you take that and subtract it from  
20 a hundred, though, because we are telling what the rectal  
21 temperature was. You subtract a degree and a half per  
22 hour -- that backs you up twelve hours from the time he  
23 is checking -- 3:30 a.m. But what did he say about  
24 Vanessa, though? She is a teeny-tiny woman. She is

1374

1 going to cool faster than the average adult. That tells  
2 us, doesn't it, after 3:30 -- John Moss. Paul Reggett  
3 was at work.

4 Fifth, let's look at the livor mortis on  
5 Bernadette. It is intense in the soles of her feet, from  
6 the hanging. We know that she was totally suspended,  
7 because there is no blanching on the bottom of her feet,  
8 no area of pressure where her feet were resting on the  
9 floor and the blood vessels would have been pinched, so  
10 that they couldn't fill with blood. That didn't happen.  
11 She was totally suspended. Intense livor of her soles  
12 of her feet.

13 What did the doctor say about that? She wasn't  
14 up there twelve hours. It wasn't intense enough. That  
15 was Reggett's first statement; wasn't it -- that she  
16 hung there all night. And consistent with that, tells  
17 us -- John Moss.

18 The next that we'll look at is the livor of  
19 Bernadette, which is not intense enough for just two  
20 hours. If Reggett hung her up there, then took her back  
21 down before he went to work, it would have been more  
22 intense. What does that tell you? Is it consistent with  
23 Reggett? No, it must have been John Moss.

24 Dr. Sopher also in looking at the livor of

1375

1 Bernadette, said she didn't lie on that bed for twelve  
2 hours, for two reasons: That you know that Reggettz did  
3 not put her up for only a couple of hours, it was not  
4 intense enough. He didn't lie her on the bed for twelve  
5 hours, because the livor was totally around her legs.  
6 If she had been on the bed all night long, the liver  
7 would have drifted to the back of her legs. That's not  
8 the finding. You can see the mottling in the photograph,  
9 ladies and gentlemen. Not Paul Reggettz -- John Moss.

10 Next, let's look at the clock. What does the  
11 time on the clock say? 6:17. Look at it. 6:17, ladies  
12 and gentlemen. This is all consistent with John Moss;  
13 not Paul Reggettz.

14 Let's look at another feature on this clock  
15 radio. You can see that the alarm is set for 7:00  
16 o'clock in the morning, that's about when mom would get  
17 up her son to go to school. Vanessa set the alarm  
18 because she went to bed that night expecting to get her  
19 son up for school the next day. The alarm is set at 7:00  
20 o'clock; and you can look at something else on this  
21 alarm.

22 When it was smashed into the floor when the cord  
23 was removed, it broke in the position in which it was  
24 found. It is on -- the alarm is set for 7:00 o'clock and

1376

1 is in the "on" position, wake to music. And that is  
2 because Mrs. Reggettz sent her husband off to work, set  
3 her alarm clock to get her son up, and was killed. The  
4 alarm is on. Everything about this clock radio, all  
5 three factors, tell you Moss -- Moss -- Moss.

6 What else do we know about the time of this  
7 crime? John Moss's confession. What time does he say  
8 it happened? It was almost daylight. So, what did he  
9 say is the truth? Is that consistent with the bodies?  
10 Is it consistent with the clock? It's all consistent;  
11 and the reason for that is, he told the truth. John  
12 Moss.

13 There is not a single thing about these bodies  
14 -- not a single objective factor that you can look at  
15 which points to Paul Reggettz. Every single one has this  
16 defendant's name right on it. The reason for that is  
17 simple; he did it. He committed the crime. He bled in  
18 the house. He went in there, he said, looking for money.  
19 Mr. Bickley said, "Well, he should have known that they  
20 didn't have any." He knew Vanessa Reggettz was there by  
21 herself with her two children, didn't he? He knew that  
22 her husband worked at night. He didn't necessarily tell  
23 the whole story. Perhaps that's why Vanessa Reggettz's  
24 panties are on the bed --- not on her body. Why her

1377

1 sanitary napkin was on the floor -- a homemade sanitary  
2 napkin, not a store-bought one, something that has no  
3 pins to secure it, no tape to secure it, no belt to  
4 secure it. It was secured in place by her underwear, but  
5 her underwear is off of her body and her sanitary napkin  
6 is on the floor.

7 He did leave out a struggle in the front bedroom,  
8 and he left out taking off her underwear. But what he  
9 did tell you in his confession, that is corroborated.

10 We know that he took certain items from the  
11 house, and we know that he took exactly what he said.  
12 He was telling the truth.

13 He told the Police who his parents were. He told  
14 the Police where his parents lived. He told the truth.

15 He told the Police that there was a struggle at  
16 the back door. That's corroborated by all of the  
17 evidence; that he was cut, of course he was cut. There  
18 was a struggle with a knife, and there is a broken knife.  
19 There is blood. He rifled through the house with a  
20 flashlight.

21 Why did he kill Vanessa Reggett? He doesn't  
22 say, but he does say that he put the scissors in her  
23 chest. He wanted to make sure she was dead. He wanted  
24 to make sure she was dead.

1378

1           The Police asked him why he put that boy in the  
2 bathtub after he had already strangled that child, and  
3 what did he say? "I wanted to make sure he was dead."  
4 Cold.

5           "What did you do next, Mr. Moss?"

6           "I got the girl and I killed her." He did what  
7 he intended to do. He killed her. He took her little  
8 body, strangled her and put her up on the back of the  
9 door facing her Christmas tree, where he opened her  
10 presents, all of the gifts that her mom and dad had  
11 bought her for Christmas. John Moss opened them. He  
12 bled on that door as he hung her up, and he bled on her  
13 shirt. You can look at her shirt. You can see where the  
14 Police cut out the blood from her shirt.

15           When you hold this shirt up, to hang the child on  
16 the back of the door, what do you find? A bloody  
17 thumbprint right where the murderer hung her. Whose  
18 blood is that? It's John Moss's blood. This shirt  
19 proves that the murderer in this case hung this child,  
20 bleeding. Right here, the thumbprint, that is not Paul  
21 Reggett's blood; it is John Moss's. And the reason for  
22 that is that Paul Reggett didn't hang this child. The  
23 murderer hung this child, and the proof is right there.  
24 He bled on the door where this child was. He left



1379

1 thumbprints, fingerprints, and glove marks on the door  
2 where he hung Mrs. Reggett -- two on one side of the  
3 door and one on the other side of the door. You know,  
4 like you would hold a door while you are struggling to  
5 get a cord through a hole.

6 The person who struggled to get that cord through  
7 that hole was wearing gloves. He left glove prints on  
8 the front and the back, just like you were holding that  
9 door.

10 The person who plunged those scissors into Mrs.  
11 Reggett's chest was wearing the gloves. Do you think  
12 that the father is going to stop and put on a pair of  
13 gloves in the heat of this passion? A murderer is going  
14 to wear gloves. John Moss wore gloves.

15 The person who opened those Christmas gifts wore  
16 gloves, bled right into the glove, and left a print of  
17 the glove in the blood. It's not Paul Reggett's blood;  
18 it's John Moss's blood.

19 The person who rifled through the house, bled on  
20 the flashlight, as I've said. Does it make sense to you,  
21 ladies and gentlemen, that a man, the father, would kill  
22 his family, then spend the whole night thinking about it?  
23 What is he going to do when he gets home? And what he  
24 does is tamper with the scene. "Gosh, I've been thinking

1380

1 about this all night, but I'm going to have to go into  
2 the house and take the little girl down. I'm going to  
3 try to get my wife down, then I'm going to run frenzied  
4 to the A&W to call the Police, then I'm going to run back  
5 to the house and take the little boy out of the bathtub."  
6 Those are the actions of a man who was not expecting --  
7 who had not idea of what he was going to find when he  
8 came home.

9 Of a father -- is a father going to leave his  
10 child hanging on the back of a door if he had killed her?  
11 He knew she was there. He wouldn't have moved her. And  
12 he did the same thing with his son. He took him out of  
13 the water.

14 Look at John Moss's confession. You look at the  
15 oral confession, because you are going to have the tape  
16 in there. You can listen to it. John Moss told the  
17 Police that he thought Vanessa Reggettz had bumps on her  
18 face.

19 Now, you're going to have the opportunity, ladies  
20 and gentlemen, to look at the photographs in this case.  
21 This is very important; you are going to see it. There  
22 is a photograph, a Polaroid photograph, of Vanessa  
23 Reggettz as she appeared in life. The photograph is  
24 dated November 5, 1979. You'll see by the flash on the

1381

1 camera that her forehead and cheeks are shiny and clear.  
2 She had a clear complexion. In life she had a beautiful  
3 complexion. The Medical Examiner described to you that  
4 the suffusion, the suffocation, caused blood to collect  
5 in her head, which discolored her face and made it look  
6 darker. And also, that that caused little pinpoint  
7 hemorrhages on her face.

8 Trooper Smith told you that he viewed a part of  
9 the autopsy and it appeared that those hemorrhages could  
10 have been bumps, acne. There is a photograph that you  
11 can look at yourself. You can look at her chin, and you  
12 can see that she looks like she does have pimples on her  
13 chin. Only the murderer would know that. Only John Moss  
14 saw her in a state in which she appeared to have acne.  
15 Only the murderer.

16 He motioned to Trooper Smith, "I thought she had  
17 bumps on her face." The last time he saw her, she did  
18 look like it, didn't she? That's exactly the way she  
19 appeared the last time he viewed her, in death.

20 What else did he tell the Police? The Police  
21 asked him, "Why do you think we got your blood?" He  
22 became wide-eyed, but he sat down. He'd been caught and  
23 he knew it. He knew that he had bled all over the  
24 Reggett residence. What did he tell them? "Well, I was

1382

1       scared. When I'm scared, my blood rushes. And I was  
2       scared. I got scared at the back door. I was scared  
3       before it happened, and after, my blood was rushing."

4               He knew she was in there. Yes, she and the kids.  
5       He said he had gone in there to get some money and that  
6       he couldn't find any. Well, we know that his blood is  
7       on the change purse. It sure is, right there on the  
8       dresser. You can look at that exhibit on the  
9       change purse. It is photographed also, in the master  
10      bedroom.

11             He said that it was almost daylight when he got  
12      home -- we know that was true. He said that he walked  
13      directly from his house to their house, walked there by  
14      walking down the railroad tracks -- that's true too,  
15      isn't it? His grandfather lived right up the railroad  
16      tracks. He said she was there at the bed with a gun --  
17      she sure was, wasn't she? Right there with the broken  
18      gun, where he had broke it on her head. She and the  
19      kids, right there in bed together.

20             He knocked her to the floor, struck her with the  
21      gun. We know that's true. We know she was in the floor,  
22      certainly, because there is a large pool of blood there.  
23      He said the gun went off.

24             "How many times did the gun go off?"

1 "Once." That's true, isn't it?

2 "Was anyone shot?"

3 "No, I don't think so." That's true, too.

4 He says he went to the back door, he ran out.  
5 You'll hear in the confession, the taped confession,  
6 where he says, "It was a curtain or a sheet in the  
7 kitchen." You'll see that every other room, all the  
8 other doorways, where there isn't an actual wooden door  
9 there is a bedspread or a sheet hanging to close off the  
10 rooms for heat, save the kitchen. The reason for that  
11 is that it was torn down in the struggle with John Moss.  
12 We know that because he said it was a curtain or a sheet.  
13 He knew its former position; he knew where it had been  
14 before it got to the floor. You see the curtain rod  
15 underneath Vanessa Reggett's body.

16 We also know that Vanessa Reggett bled on that  
17 sheet, drops of blood, drops of blood that could only  
18 occur when she was alive.

19 Paul Reggett said that he put that sheet on the  
20 floor after his family was already dead to make it look  
21 like a burglary. If it was hanging -- now, these aren't  
22 smears or smudges -- Vanessa Reggett could not have  
23 dropped the blood upon it. That had to have occurred  
24 while she was still walking around, still having a

1384

1 struggle at the back door, still looking for a knife,  
2 still swinging a knife at John Moss. The sheet in the  
3 kitchen tells you that John Moss is the murderer. He  
4 said he tied her up and he placed the scissors in her to  
5 make sure that she was dead. The same for the boy,  
6 making sure he was dead.

7 He killed each of them twice. He killed them  
8 each twice. He was making sure they were dead. He did  
9 make sure they were dead. He was successful. He  
10 strangled Vanessa Reggett with a cord, and he stabbed  
11 her with the scissors. He took the boy and strangled him  
12 with a cord, and he drowned him. He took the girl and  
13 strangled her with a cord, and then he hung her. He  
14 killed them each twice. He was successful.

15 What else did he tell the Police? Well, he took  
16 the little gun because it was broken. We know that to  
17 be true. He took a .22 rifle, and he described it  
18 accurately. "Well, it was a bolt action, it was a .22.  
19 It had a screw underneath the stock where it all came  
20 apart." That was all true. He knew how to describe that  
21 rifle, because he had it. He had taken it apart. He  
22 took it to Cleveland. He said, "Check with my brother,  
23 Carlton."

24 He said that he took a Christmas gift; we know

1385

1 that's true. He took flatware from underneath that tree,  
2 and he called it dishes. Of course, as you've seen, he  
3 saw dishes beneath that tree. He said he only took one  
4 gift and he gave it to his best friend's mother, Mrs.  
5 Johnson. She kind of left it on the dresser; didn't she?  
6 Why didn't she open it? Why did she just leave it  
7 sitting? But he only took one gift, and that, he gave  
8 to Mrs. Johnson. Mrs. Johnson told you, "Right there it  
9 is, the flatware." That's what John Moss gave her;  
10 that's what John Moss stole from under the Reggett's new  
11 Christmas tree.

12 What about the camera? He took a handle camera  
13 -- Paul Reggett's handle camera. We knew that Paul  
14 Reggett had a Polaroid camera with a handle. We've got  
15 some of the photographs that he took of battle scenes;  
16 the Civil War was his hobby.

17 We also knew that John Moss's sister had a handle  
18 camera. This is a camera that he was familiar with. Her  
19 name is on it, but it's broken. She needed a new one;  
20 he saw the opportunity. Right there it was for her, a  
21 new handle camera that works. The Police didn't even  
22 know that was gone, and they didn't know that the  
23 flatware belonged in the house because they couldn't talk  
24 to Paul Reggett about it.

1386

1 Well, we know it was. John Moss told us it was.  
2 And now Paul Reggett says -- he's able to testify and  
3 he can say, "Yes, I bought my wife that flatware. I  
4 remember the rose pattern." John Moss says he took it  
5 from the house and gave it to Mrs. Johnson, where he left  
6 his glove print, the same as the one that is in the  
7 house. He said he wrapped it back up and gave it to her.

8 It's all the way it happened; all of it. Look at  
9 the blood; look at the reliability of the blood, ladies  
10 and gentlemen.

11 We're in a situation where the Police have a man  
12 in jail for murdering his family. The serologist and the  
13 chemist start examining this blood and say, "There's a  
14 problem here, folks." There is a problem here. There  
15 is some blood in this house that doesn't belong to these  
16 Reggett family members. This crime didn't occur the way  
17 Paul Reggett said it occurred. They don't know what  
18 happened. They didn't know how it happened at this  
19 point. All they know is that it didn't happen like Paul  
20 Reggett said it did. So, they talked to John Moss.  
21 They want to know if Paul Reggett was there.

22 They asked him, "Was he with you? Was he helping  
23 you? Was he an accessory?"

24 "No, he was not. He wasn't there."



1387

1 "Was Paul Reggettz in the house?" He said,

2 "No."

3 "Well, had you talked to him about Vanessa?" He  
4 said, "No. I did it all by myself."

5 And that's the truth. He did do it all by  
6 himself. He certainly did. Look at the circumstances  
7 of taking his confession. Trooper Smith and Trooper  
8 Williams both told you he was very cooperative, very  
9 cooperative. Trooper Smith talked with him for maybe  
10 five minutes about this serious crime. He didn't want  
11 to describe the triple homicide case in the back of a  
12 patrol car where he didn't have the rights forms. He  
13 didn't have a tape recorder. He didn't have any of the  
14 proper equipment that is good police work. So, they  
15 stopped at the first State Police Detachment they came  
16 to when they hit the West Virginia border.

17 John Moss was so cooperative. He was advised of  
18 his rights on three separate occasions. When he came in  
19 there, he made no complaints of any mistreatment in the  
20 car. The reason for that was, there was none. He made  
21 no complaints to Williams about his treatment.

22 The following day, he is at the Kanawha County  
23 Jail and Chuck Pettry talks to him. Pettry is not a  
24 Police Officer, he is not wearing a uniform. He isn't

1388

1 armed. He isn't a threatening figure. Pettry says,  
2 "We'd like for you to talk to Trooper Smith, okay?" And  
3 he says, "Okay, I'll talk to Trooper Smith."

4 They're having a little trouble finding your  
5 camera and they want to make sure they are looking in the  
6 right closet. They want to check on that, okay? He  
7 didn't complain any to Chuck Pettry. These Troopers are  
8 two hundred fifty miles away, they are up in Cleveland.  
9 And he talked to his mom, and did he say to his mom,  
10 "Well, gee, whiz, these guys are really mean. You'd  
11 better watch yourself there. You're alone with those  
12 Troopers"? Heck, no. He said, "I'm fine," because he  
13 was. He didn't say, "Gosh, they're mistreating me down  
14 here, mom." He said, "I'm fine. I'm okay." And he  
15 continued to be just as cooperative with them as he had  
16 been the day before, the same attitude, the same voice,  
17 the same level of cooperation. He wanted to help them  
18 find the rifle at the time.

19 He gave them a truthful statement, ladies and  
20 gentlemen, and all of the evidence bears that out.

21 Mr. Huffman wants you to look at these figures on  
22 this blood. We didn't talk about it that much, but let's  
23 look at the circumstances surrounding the blood.

24 Did anybody else in the Kanawha Valley who has

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1 this blood confess? Nope.

2 Did anybody else in the Kanawha Valley who has  
3 this blood -- do we have any evidence of anybody else  
4 who lived up the tracks? John Moss did.

5 Did anybody else enter the house, knowing that  
6 Vanessa was there alone with her children? Nope.

7 Did anybody else have a camera taken from the  
8 Reggett house? No.

9 Did anybody else have flatware taken from the  
10 Reggett house? No.

11 Did anybody else take a small broken pistol and  
12 throw it away at St. Albans High School? No.

13 Did anybody else take a rifle out of the house  
14 and take it home to Ohio? No.

15 Did anyone else kill the Reggett family? No.

16 You look at this case, ladies and gentlemen, and  
17 you look at the reasonableness. You look at reasonable  
18 hypotheses. Sometimes there are two hypotheses which are  
19 reasonable in a case, given a set of circumstances.

20 Say, you're back in your deliberation room and  
21 you're looking down on Virginia Street and you see a car  
22 coming east, one car. The windshield wipers are on. You  
23 can't see any rain, so you say, gee, I guess it could be  
24 raining; or perhaps a person is just cleaning their

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1 windshield. Those things are both very reasonable under  
2 that circumstance. Very reasonable. But then, the light  
3 up at Clendenin Street turns green, and three or four or  
4 five more cars come down Virginia Street, all of them  
5 have on their windshield wipers. What does that tell  
6 you? It is no longer reasonable that the windshield  
7 wipers are on cleaning the windshield. Six cars coming  
8 down Virginia Street with the windshield wipers on tells  
9 you that it's raining. One reasonable; now one  
10 unreasonable.

11 You have the same thing in this case. One thing,  
12 and one confession. Just the confessions. You don't  
13 know, do you? That's why you have to look at everything  
14 else. You have to look at the blood. You have to look  
15 at the flatware. You have to look at the camera, at the  
16 rifle, at the opportunity, at the knowledge, the money -  
17 - he took change, he took Christmas presents. Everything  
18 he said is the way it happened. And he said more than  
19 the Police knew.

20 Look at it all, and when you look at it all, you  
21 will find that there is only one reasonable hypothesis.  
22 There are other hypotheses, sure. But they are absurd.  
23 There is one reasonable hypothesis, and that is that John  
24 Moss killed the three members of the Reggett family.

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1           At this time, I want to ask you to think about  
2 the evidence. Think closely about what happened to these  
3 three people in St. Albans in December of 1979. Think  
4 about the brutality. Think about the children, who  
5 watched their mother die. The children, who were hung  
6 by a man so cold that he could open their Christmas  
7 presents with a dead baby hanging over his shoulder  
8 looking at him.

9           I ask you to go back in your Jury Deliberation  
10 Room and find John Moss guilty of all three counts in  
11 this indictment.

12  
13           MR. BICKLEY: May we approach the bench, your  
14 Honor?

15           THE COURT: Yes.

16  
17           WHEREUPON, a bench conference was held, and the  
18 following transpired:

19  
20           THE COURT: I know you're going to register an  
21 objection. Number one, is it something that you think  
22 you want a curative instruction on, or is it  
23 instructional?

24           MR. BICKLEY: I don't know.

WEST VIRGINIA SUPREME COURT OF APPEALS

To: Kanawha County Circuit Clerk  
Date: September 14, 2004  
Re: Moss v. Trent  
No. 31646

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

2004 OCT -7 PM 2:32

FILED

Received of Rory L. Perry II, Clerk, Supreme Court of Appeals of West Virginia,  
a copy of the **mandate and record** in the above-styled action.

Dated at Charleston, West Virginia, this 7th day  
of October, 2004.

Cathy S. Gatson / mB  
Circuit Clerk

RETURN TO:

SUPREME COURT OF APPEALS OF WV  
STATE CAPITOL COMPLEX  
BLDG. 1, ROOM E-317  
CHARLESTON, WV 25305  
ATTENTION: MEGAN BERRY

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